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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.03-00
408.06-00

MAR 18 2003

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Trustee C:

Individual D:

IRA X:

Date 1:

Date 2:

Date 3:

Value 1:

State F:

Dear Ms. :

This is in response to the letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , , in which you, through your authorized representative, request several letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A was born on Date 1, 1931, and died on Date 2, 2001 without having attained age 70 ½. Taxpayer B, who was born on Date 3, 1942, is the surviving wife of Taxpayer A. At his death, Taxpayer A maintained IRA X with Trustee C. Taxpayer A had designated his prior spouse, Individual D, as the beneficiary of his IRA X but Individual D predeceased Taxpayer A. The date of death value of IRA X was Value 1.

The account agreement of IRA X provides, in pertinent part, that if an account owner designates a beneficiary and the beneficiary predeceases the account owner, and the account owner does not designate another beneficiary, the account owner's estate will be the beneficiary.

No distributions have been made from IRA X either before or after the date of Taxpayer A's death. Your authorized representative asserts, on your behalf, that IRA X meets the requirements of Code § 408(a).

Taxpayer A died intestate. Under the laws of State F, Taxpayer B, as Taxpayer A's surviving spouse, has a priority claim to serve as the personal representative of Taxpayer A's estate. Taxpayer B has filed a petition for the probabe of Taxpayer A's estate, and she has been appointed the sole personal representative of Taxpayer A's estate.

Pursuant to § 732.102 of the Statutes of State F, the intestate share of a decedent's surviving spouse is the entire intestate share if no lineal descendant of the decedent survives the decedent. Your authorized representative has asserted, on your behalf, that Taxpayer A was survived by no known living lineal descendants. Thus, pursuant to the above-referenced section of the State F Statutes, Taxpayer B's share of Taxpayer A's estate is the entire intestate estate including IRA X.

Taxpayer B, acting as sole personal representative of the estate of Taxpayer A, will cause Taxpayer A's IRA X to be distributed to his estate. Then in partial satisfaction of her claim to the intestate portion of Taxpayer A's estate, Taxpayer B will then pay the IRA X account balance to herself as sole intestate beneficiary of Taxpayer A's estate. Finally, Taxpayer B will roll over the proceeds of IRA X into an IRA set up and maintained in her name. The rollover will be accomplished not later than the 60th day following the date on which the IRA X distribution is made to Taxpayer A's estate. All expenses and changes against Taxpayer A's estate will be paid from assets in the estate other than IRA X.

The above-referenced IRA X distribution and rollover will occur no later than December 31, 2003.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That, if Taxpayer B appoints IRA X to herself and receives the proceeds of IRA X, she will be treated as the payee or distributee thereof for purposes of Code § 408(d)(3);

2. that IRA X will not be treated as an inherited IRA within the meaning of Code section 408(d) with respect to Taxpayer B;

3. that Taxpayer B is eligible to roll over the distribution from IRA X into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover of such distribution occurs no later than the 60th day following the day said IRA X proceeds are paid to Taxpayer A's estate; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for the year in which said IRA X distribution occurs and the year in which said rollover is timely made, any portion of the amounts distributed from said IRA X and timely rolled over into an IRA set up and maintained in Taxpayer B's name.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be

treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d) (3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

With further respect to your ruling requests, § 408(a)(6) of the Code provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained.

Code § 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

(i) will be distributed to such employee not later than the required beginning date, or
(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

§ 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee (IRA holder) attains age 70 1/2.

Code § 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before his required beginning date without having designated a beneficiary, the entire plan or IRA interest must be distributed within 5 years of the death of the plan participant (or IRA holder).

On April 17, 2002, the Internal Revenue Service published Final Income Tax Regulations ("Final Regulations") governing required distributions from qualified plans and IRAs under Code sections 401(a)(9) and 408(a)(6) (see 67 Federal Register 18988). The "Final Regulations" were also published in the Internal Revenue Bulletin at 2002-19 I.R.B. 852. § 1.401(a)(9)-3 of the "Final Regulations", Question and Answer-2, provides, in general, that the 5-year rule of Code § 401(a)(9)(B)(ii) is satisfied if the employee's

(IRA holder's) entire interest is distributed by the end of the calendar year which contains the fifth anniversary of the date of the employee's (IRA holder's) death.

§ 1.401(a)(9)-4 of the "Final Regulations", Question and Answer-3, provides, in general, that only individuals may be designated beneficiaries for purposes of Code § 401(a)(9). Thus, an estate may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of the employee's benefit, the employee will be treated as having no designated beneficiary for purposes of Code § 401(a)(9).

§ 54.4974-2 of the "Final Pension Excise Tax Regulations", which were also published on April 17, 2002 at 67 Federal Register 18988 and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852, provides at Q&A-3(c), that if the 5-year rule of Code § 401(a)(9)(B)(ii) applies to the distribution to a payee, no amount is required to be distributed for any calendar year to satisfy the applicable section in paragraph (a) of this A-3 until the calendar year which contains the date 5 years after the date of the employee's (IRA holder's) death.

§ 1.408-8 of the "Final Regulations", Question and Answer-5, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If the surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of Code § 401(a)(9)(A) rather than the requirements of § 401(a)(9)(B). Q&A-5 further provides, in pertinent part, that an election will be considered to have been made if either of the following occurs: (1) any required amounts in the account have not been distributed within the appropriate time period applicable to the beneficiary of the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

§ 1.408-8 of the "Final Regulations", Q&A-5(a), further provides, in relevant part, that a surviving spouse may make an election to treat an IRA of a deceased individual as his or her own only if he or she (the surviving spouse) is the sole beneficiary of the IRA and has an unlimited right to withdraw amounts from the IRA. A surviving spouse may not treat an IRA as his or her own if a trust is the beneficiary of the IRA, even if the surviving spouse is a (or sole) beneficiary of the trust.

Consistent with the language of the "Final Regulations", above, a surviving spouse may not treat an IRA of a decedent as his or her own if the IRA passes through an estate even if the surviving spouse is the sole beneficiary of the estate.

The Preamble to the "Final Regulations" provides, in relevant part, that, if a surviving spouse actually receives a distribution from an IRA that was the property of a deceased individual, the surviving spouse is permitted to roll over that distribution within 60 days into an IRA in his or her name to the extent that the distribution is not a required distribution, regardless of whether the surviving spouse is the sole direct beneficiary of the IRA owner.

The two issues to be resolved in this ruling request are whether Taxpayer B may roll over at least some portion of the IRA X distribution which she will receive and, if so, what portion may be rolled over?

Generally, if the proceeds of a decedent's IRA are payable to a decedent's estate , and are paid to the personal representative of the estate who then pays them to the decedent's surviving spouse as intestate beneficiary of the estate, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse, generally, shall not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole personal representative of the decedent's estate who must pay the decedent's IRA to herself as sole intestate beneficiary of the estate, and who, after such payment rolls them into an IRA set up and maintained in her name.

In this case, Taxpayer B is the sole personal representative and the sole intestate beneficiary of the estate of Taxpayer A. Taxpayer B will receive a distribution of all amounts standing in IRA X and then pay said amounts to herself as Taxpayer A's intestate beneficiary. Once the IRA has been so paid, Taxpayer B will take the IRA proceeds and roll then into an IRA set up and maintained in her name. The rollover will occur no later than the 60th day following the date on which the IRA was paid to Taxpayer A's estate. Under this set of facts, the Service will not apply the general rule set forth above. Thus, Taxpayer B is eligible to roll over at least a portion of the IRA X proceeds to her own IRA.

With respect to the issue of what portion of IRA X may be rolled over into Taxpayer B's IRA, as noted above, a surviving spouse may not roll over a required distribution into her own IRA. As also noted above, Taxpayer A died without having designated a beneficiary for purposes of Code § 401(a)(9). Thus, distributions from Taxpayer A's IRA X are subject to the 5-year rule of Code § 401(a)(9)(B)(ii).

Taxpayer A died during calendar year 2001. Thus, in order to comply with the 5-year rule of Code § 401(a)(9)(B)(ii), distribution of the IRA X account balance must be completed no later than December 31, 2006. However, pursuant to § 54.4974-2 of the

"Final Pension Excise Tax Regulations", Q&A-3(c), no distribution is required before calendar year 2006. Thus, during 2003, there is no required distribution. As a result, if Taxpayer B receives a distribution of the IRA X account balance during 2003, her ability to roll over said distribution is not affected by the limitation found in the "Final Regulations" that required distributions may not be rolled over.

Therefore, with respect to your ruling requests, we determine as follows:

1. That, if Taxpayer B appoints IRA X to herself and receives the proceeds of IRA X, she will be treated as the payee or distributee thereof for purposes of Code § 408(d)(3);

2. that IRA X will not be treated as an inherited IRA within the meaning of Code section 408(d) with respect to Taxpayer B;

3. that Taxpayer B is eligible to roll over the distribution from IRA X into an IRA set up and maintained in her name pursuant to Code section 408(d)(3)(A)(i) as long as the rollover of such distribution occurs no later than the 60th day following the day said IRA X proceeds are paid to Taxpayer A's estate; and

4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes for the year in which said IRA X distribution occurs and the year in which said rollover is timely made, any portion of the amounts distributed from said IRA X and timely rolled over into an IRA set up and maintained in Taxpayer B's name.

This ruling letter is based on the assumption that IRA X, referenced herein, either has complied or will comply with the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's rollover IRA will comply with the requirements of Code section 408(a) at all times relevant thereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan
Manager,
Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437