



200440024

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL - 7 2004

UICs: 408.00-00
408.03-00

T:EP:RA

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

IRA X:

Bank O:

Bank P:

Date 1:

Year 1:

Date 2:

Year 2:

Date 3:

Year 3:

Date 4:

Date 5:

Year 4:

Trust T:

State Z:

Dear Mr. _____ :

This is in response to the _____ letter, submitted by you, as supplemented by information provided by you on _____, in which you request a series of letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, Year 1, died on Date 2, Year 2, without having attained her required beginning date as that term is defined in section 401(a)(9)(C) of the Internal Revenue Code. Taxpayer A was survived by her husband, Taxpayer B. At the time of her death, Taxpayer A maintained IRA X, an individual retirement arrangement (IRA), with Bank O. As of the date of this ruling request, IRA X remained in the name of Taxpayer A.

Taxpayer A was a resident of State Z at her death.

You have asserted that distributions have been made from IRA X since Year 2, the year of Taxpayer A's death.

Taxpayer B's date of birth was Date 5, Year 4. Thus, as of the date of this ruling request, Taxpayer B had attained age 70 ½.

On Date 4, Year 3, Taxpayer A named Trust T, dated Date 3, Year 3, as the sole primary beneficiary of her IRA X. Taxpayers A and B were the Grantors and initial co-trustees of Trust T. Pursuant to the provisions of Trust T, either co-trustee possesses the trustee powers described and enumerated therein.

Clause First of Trust T provides that "The Trustees shall pay the entire net income of the trust in reasonable installments to or for the benefit of the Grantors during their lifetimes together with such amounts of the trust principal as the Grantors or either one of them may withdraw from time to time."

Taxpayer B, as sole remaining trustee of Trust T, proposes to request payment of the remaining IRA X balance be made to Trust T. Pursuant to Clause First of Trust T, Taxpayer B, as sole living Trust T Grantor, proposes to demand payment of the entire IRA X balance. Upon receipt of said IRA X balance, Taxpayer B will then contribute, as a rollover contribution, the entire IRA X balance, less any amount required to be distributed in accordance with Code section 408(a)(6) based on Taxpayer B's life expectancy, into an IRA set up and maintained in his name with Bank P with Taxpayer C, his daughter, the sole beneficiary thereof of his IRA. Said rollover contribution will be made no later than 60 days following the date payment of IRA X is made to Taxpayer B as trustee of Trust T. Furthermore, said rollover contribution will be made no later than December 31, 2004.

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

1. IRA X will not be treated as an inherited IRA, within the meaning of section 408(d) of the Code, with respect to Taxpayer B.
2. Taxpayer B will be eligible to roll over the proceeds from IRA X, less any amount required to be distributed in accordance with Code section 408(a)(6), into an IRA set up and maintained in his own name with Bank P, as long as the rollover occurs no later than the 60th day from the date the proceeds are received by Taxpayer B in his capacity as trustee of Taxpayer A's Trust T; and
3. Taxpayer B will not be required to include in his gross income for federal income tax purposes, for the year in which the distribution and rollover of the IRA X proceeds is made pursuant to the second requested ruling, any portion of the amounts timely rolled over to 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.

Code section 408(d)(3)(E) provides, in general, that paragraph (d) does not apply to any amount to the extent such amount is required to be distributed under paragraph (a)(6).

Code section 408(a)(6) 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 an IRA trust is maintained.

Code section 401(a)(9)(C) provides, in relevant part, that distributions from an IRA are required to begin to the IRA holder no later than April 1 of the calendar year following the calendar year during which the IRA holder attains age 70 ½.

On April 17, 2002, "Final" Income Tax Regulations were published in the Federal Register with respect to Code § 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). § 1.408-8 of the "Final" Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the "Final Regulations" provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through a trust.

In this case, the IRA X account balance remaining at Taxpayer A's death is payable to Trust T pursuant to the terms of Taxpayer A's beneficiary designation. Taxpayer B, Taxpayer A's surviving spouse, is the sole trustee of Trust T, and, as the sole surviving Grantor of Trust T, the sole beneficiary Trust T. As trustee of Trust T, Taxpayer B will cause the IRA X proceeds to be paid to Trust T after which, pursuant to request of Taxpayer B, as sole beneficiary of Trust T, he will pay them to Taxpayer B as beneficiary. Taxpayer B will then, as Trust T beneficiary, directly roll over the IRA X proceeds, less any required distribution, into an IRA set up and maintained in his own name with Bank P. Said rollover will occur within 60 days of the date the IRA amounts are distributed from IRA X.

Under the facts stated above, Taxpayer B is to be treated as the payee and beneficiary of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude as follows:

1. IRA X will not be treated as an inherited IRA, within the meaning of section 408(d) of the Code, with respect to Taxpayer B.
2. Taxpayer B will be eligible to roll over the proceeds from IRA X, less any required distribution calculated using Taxpayer B's life expectancy, into an IRA set up and maintained in his own name, as long as the rollover occurs no later than the 60th day from the date the proceeds are received by Taxpayer B in his capacity as trustee of Trust T; and

3. Taxpayer B will not be required to include in his gross income for federal income tax purposes, for the year in which the distribution and rollover of the IRA X proceeds is made pursuant to the second requested ruling, any portion of the amounts timely rolled over into an IRA set up and maintained in Taxpayer B's name.

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by Taxpayer B will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Taxpayer B's rollover of the IRA X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

It is noted that Taxpayer B has reached his required beginning date and his new, rollover, IRA will be subject to the applicable mandatory distribution requirements of Code section 401(a)(9)(A) made applicable to IRAs pursuant to section 408(a)(6).

The author of this ruling is
reached at

SE:T:EP:RA:T3 who may be

Sincerely yours,



Frances V. Sloan
Manager, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437