

MAY 13 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Attention:

Legend:

Trust A =

Trust Agreement A =

Individual B =

Individual C =

State S =

Company M =

Company N =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

Amount I =

IRA X =

IRA Y =

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Dear

This is in response to correspondence dated June 7, 2004, as supplemented by correspondence dated September 28, 2004, and January 6, February 2, and March 2, 2005, submitted on behalf of Trust A by its authorized representative in which a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code) is requested. This correspondence was also supplemented by telephone conferences held on January 6 and February 22, 2005.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Trust A was created under the provisions of Trust Agreement A, dated February 18, 1998, upon the death of Individual B. It has been represented on your behalf that Trust A is a grantor trust and is irrevocable. Individual B died on March 29, 2001. Individual B was married to Individual C at the time of his death. The current sole trustee of Trust Agreement A and Trust A is Individual C.

It has been represented on your behalf that Individual C, as sole trustee of Trust Agreement A, has the sole power and authority to allocate assets of Trust Agreement A between Trust A and the other sub-trusts created thereunder. It has also been represented on your behalf that Individual C has the unfettered right under State S law to distribute the assets of Trust A to herself as beneficiary or for her benefit without regard to the interests of any remainder beneficiary.

Prior to his death, on or about February 15, 2000, Individual B established an individual retirement account (IRA), IRA Y, with Company M. On the same date, Individual B named Trust Agreement A as the sole primary beneficiary of his IRA. Individual B maintained said IRA Y at his death.

On [REDACTED] Trust A established IRA X, a beneficiary-directed individual retirement account with Company M, and Amount D was transferred to IRA X from IRA Y, originally established by Individual B during February 2000. The minimum required distribution of Amount E was subsequently distributed from IRA X to Trust A on [REDACTED]. Residual interest amounts totaling Amount F were transferred to IRA X in [REDACTED] and [REDACTED] 2003.

In [REDACTED] Trust A engaged Company N to manage IRA X. In order to implement this arrangement, Company N and Company M both advised the trustee of Trust A that a new IRA needed to be established with Company M. A Company M account representative advised said trustee that an institutional account was required in order to grant Company N investment discretion with respect to IRA X. The Company M account representative also assured the trustee of Trust A that he would implement the establishment of the new IRA and supervise the transfer of assets from IRA X to the new IRA. The trustee of Trust A was requested to complete and sign the New Account Agreement and Application for Brokerage Account form. The trustee of Trust A signed this form on or about [REDACTED]. The trustee received an investment report from Company M with respect to the period [REDACTED] through [REDACTED] showing the account titled "Individual C, Trustee; Trust A Inherited IRA" and reflecting cash transfers totaling Amount G from IRA X to the new IRA on [REDACTED] and [REDACTED]. Residual

interest amounts totaling Amount H were transferred to the new IRA in June and July 2003.

On [REDACTED] the trustee of Trust A requested that the Company M account representative distribute the required minimum distribution for calendar year 2003 from the new IRA. The trustee was then orally advised by the Company M account representative that the new IRA was not properly coded by Company M to allow the issuance of Form 1099-R for the requested distribution. The Company M account representative determined that the Amount I minimum required distribution could be transferred back to IRA X in order to assure that a Form 1099-R could be issued for the required distribution. On [REDACTED] Amount I was transferred in cash from the new IRA to IRA X and, in turn, Amount I was then distributed from IRA X to Trust A. In [REDACTED] Company M issued Form 1099-R showing the distribution of Amount I to Trust A.

In early [REDACTED] the Trust A trustee began reviewing tax-related information relating to the preparation of her [REDACTED] income tax returns. At that time, she noticed that a Form 1099-INT had been issued with respect to the new IRA and questioned her Company M account representative about this. She was then advised for the first time that the new IRA had been improperly established as a trust account and not as an IRA. Until this time, the trustee of Trust A was unaware that the trust account was not an IRA.

It has been represented that the [REDACTED] and [REDACTED] distribution from IRA X to the Company N account within Company M occurred more than one year after the date of any other distribution from IRA X that was rolled over into any IRA, and no other amount that was distributed from any other IRA within this one-year period was rolled over into IRA X. In addition, the funds on deposit in the Company N account within Company M were not used by Trust A in any way except to fund the required minimum distribution for 2003.

Based on the facts and representations, the following rulings were requested:

1. The proceeds of the Company N account may be transferred to Individual C in order for her to roll over such proceeds to an IRA established in her own name and that such IRA will not be deemed to be an inherited IRA within the meaning of section 408(d)(3) of the Code.
2. None of the proceeds of the Company N account will be includible in the gross income of either Individual C or Trust A except to the extent such proceeds were applied to make required minimum distributions in the years [REDACTED] and [REDACTED].
3. The Service waives the 60-day rollover requirement contained in section 408(d)(3) of the Code in this instance.

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

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of Code section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001 are eligible for the waiver under section 408(d)(3)(I) of the Code.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" regulations, in relevant part, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

Section 1.401(a)(9)-4, Q & A-3(a) of the regulations provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person that is not an individual, such as an employee's estate, may not be a designated beneficiary. Further, section 1.401(a)(9)-4, Q & A-5(a) provides, in pertinent part, that a trust is not a

designated beneficiary even if the trust is named as a beneficiary. Consequently, Trust A is not a designated beneficiary of Individual B's IRA even though the Trust was named by Individual B as the beneficiary of his IRA.

However, section 1.401(a)(9)-4, Q & A-5(a) of the regulations further provides that if the requirements of paragraph (b) of Q & A-5 are met, and the required documentation as described in Q & A-6(b) (required minimum distributions after death) is provided to the plan administrator by the trustee of the trust, the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of Code section 401(a)(9). If these requirements are met, the trust is a "see-through" trust and is a named beneficiary of the IRA as of the date of the IRA owner's death, and the beneficiaries of the trust, with respect to the trust's interest in the IRA, may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from the IRA under section 401(a)(9) of the Code.

Section 1.408-8 of the "Final" regulations, Q & A-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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Revenue Ruling 85-13, 1985-1 C.B. 184 concludes that if a grantor is treated as the owner of the entire trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes. The reason for attributing items of income, deduction, and credit to the grantor under section 671 is that, by exercising dominion and control over a trust, either by retaining a power over or an interest in the trust, or by dealing with the trust property for the grantor's benefit, the grantor has treated the property as though it were the grantor's property.

In this case, Individual B named Trust Agreement A as the beneficiary of his IRA, IRA Y. Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, shall not be eligible to roll over the distributed IRA proceeds into her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

In this case, upon the death of Individual B, Individual C became the sole trustee of Trust Agreement A with the authority to allocate Trust Agreement A assets in any way in which she deemed appropriate, including allocating them to Trust A. Once allocated to Trust A, as sole trustee, Individual C could then have paid the allocated IRA assets to herself as sole beneficiary of Trust A. If she had done so, Individual C, as the individual who would have made every decision leading up to Trust A's interest in Individual B's IRA being paid to herself, would have been treated as having acquired Individual B's IRA from Individual B and not from Trust A.

Based on the above, the Service will treat Individual C, Individual B's surviving spouse, as a spouse who would have been eligible to roll over the above described IRA Y interest into an IRA set up and maintained in her name.

Therefore, with respect to the first ruling request, we conclude that the proceeds of the Company N account, not to exceed the limits found below, are eligible to be transferred (pending resolution of your additional ruling requests) to Individual C in order for her to roll over such proceeds to an IRA established in her own name and that such IRA will not be deemed to be an inherited IRA within the meaning of section 408(d)(3) of the Code.

With respect to the second and third rulings requested, the information presented demonstrates that the trustee of Trust Agreement A and Trust A relied upon the advice of Companies M and N to establish a new IRA, and was assured by the Company M account representative that he would implement the establishment of the new IRA and supervise the transfer of assets from IRA X to the new IRA. In addition, the trustee received an investment report from Company M for [REDACTED] through [REDACTED] showing the account titled "Individual C, Trustee; Trust A Inherited IRA" and cash transfers totaling Amount G from IRA X to this new account made on [REDACTED] and [REDACTED]. However, a new IRA was not established by Company M, contrary to information given by the Company M account representative. Therefore, because of these errors committed by a financial institution, Amount G was not transferred into an IRA.

Thus, with respect to the third ruling request, (except as noted below), pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount G. Individual C is granted a period of 60 days from the issuance of this ruling letter to contribute Amount G into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount G will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Furthermore, based on the above, and based on our response to your third ruling request, with respect to the second ruling request, we conclude that, if a rollover is accomplished into a rollover IRA, none of the proceeds of the Company N account, totaling Amount G and gains and losses allocated thereto, will be includible in the gross income of either Individual C or Trust A with respect to either calendar year [REDACTED] or the

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year of rollover, except to the extent such proceeds were applied to make required minimum distributions in the years [REDACTED] and [REDACTED].

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6).

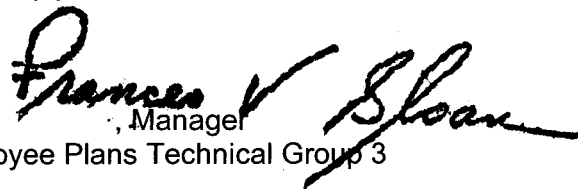
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether the IRAs described herein satisfied the requirements of section 408 of the Code.

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

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan
Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose