



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

200634065

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR - 7 2006

T:EP:RA:TB

*Uniform Issue List: 408.01-00*

**Legend:**

Decedent A =  
Custodian C =  
Amount D =  
State F =  
Date M =  
Date N =  
Date P =  
IRA X =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by correspondence dated December 16, 2005, concerning the proper rollover treatment of a distribution from Decedent A's individual retirement Account ("IRA")(IRA X) under section 408d(3) of the Internal Revenue Code (the "Code").

Your authorized representative has submitted the following facts and representations:

Decedent A was born on Date M, 1938, and died on Date N, 2005 while a resident of State F without having attained age 70 ½. You were married to Decedent A at the time of her death. At her death Decedent A maintained IRA X with Custodian C. The date of death value of IRA X was approximately Amount D. The records of Custodian C do not reflect a beneficiary designation for Decedent A's IRA X. Article

VII, section 11(a) of the account agreement of IRA X provides that if no beneficiary is designated on an IRA, the account owner's estate will be the beneficiary.

Decedent A died testate. Decedent A's last will and testament gave, devised and bequeathed all of Decedent A's residuary estate to you, if you survived her. Article XIII of Decedent A's Last Will and Testament named you, her spouse, as the sole executor of her estate.

You, acting as sole representative of the estate of Decedent A's estate, will request Custodian C to distribute the funds in IRA X to Decedent A's estate. You will then pay the IRA X proceeds to yourself as sole residuary beneficiary of Decedent A's estate. You will then roll over the proceeds of IRA X into an individual retirement account set up and maintained in your name. The rollover will be accomplished no later than 60 days following the date of the distribution to Decedent A's estate.

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

1. If you appoint IRA X to yourself and receive the proceeds of IRA X, you will be treated as the payee or distributee thereof for purposes of section 408(d) of the Code.
2. That IRA X will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to you.
3. You are eligible to roll over the distribution from IRA X into an IRA set up and maintained in your name.
4. You will not be required to include in your gross income for federal income tax purposes for the year in which the IRA X distribution occurs and the year in which said rollover is timely made (2006), any portion of the amount distributed from IRA X and timely rolled over into an IRA set up and maintained in your 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.

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the 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.

Although not specifically stated in the regulations, a surviving spouse may not elect to treat the IRA of a decedent as his/her own if an estate is the beneficiary of the IRA even if the spouse is both the sole executor of the estate and also the sole beneficiary of the estate.

The Preamble to the 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 either a trust and/or an estate.

In this case, the IRA X account balance remaining at Decedent A's death is payable to Decedent A's estate pursuant to the terms of the will of Decedent A. Pursuant to the terms of her last will, the residue of the estate, which includes IRA X, shall be devised to you as sole beneficiary. As sole executor of Decedent A's estate, you will cause the IRA X proceeds to be distributed to the estate and subsequently allocated to you as residuary beneficiary thereof. You then will transfer the IRA X proceeds into an IRA set up and maintained in your name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X to Decedent A's estate.

Under the facts stated above, you are 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 that

1. If you appoint IRA X to yourself and receive the proceeds of IRA X, you will be treated as the payee or distributee thereof for purposes of section 408(d) of the Code.
2. That IRA X will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to you.
3. You are eligible to rollover the distribution from IRA X into an IRA set up and maintained in your name.
4. You will not be required to include in your gross income for federal income tax purposes for the year in which the IRA X distribution occurs and the year in which said rollover is timely made (2006), any portion of the amounts distributed from IRA X and timely rolled over into an IRA set up and maintained in your 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 you will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that your rollover of the IRA X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

This ruling 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 by others as precedent

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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

**200634065**

If you have any questions, please call  
(not a toll free number).

(ID - ) at ( ) -

Sincerely Yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose  
Deleted Copy of Ruling

CC: