Internal Revenue Service

Department of the Treasury 200032045

Washington, DC 20224

Index Nos: 408.00-00
408.03-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3 ID:50-03192

Date:

MAY 15 2000

LEGEND:

Taxpayer A:

Taxpayer B:

IRA 1:

IRA 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Court C:

County D:

State E:

Sum 1:

Sum 2:

Sum 3:

Sum 4:

Dear Ms. :

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

Taxpayer A, whose date of birth was Date 1, died on Date 2 prior to attaining age 70 ½. Taxpayer A was survived by his wife, Taxpayer B.

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At his death, Taxpayer A owned two individual retirement arrangements (IRAs), IRA 1 and IRA 2. Taxpayer A's estate is the beneficiary of IRAs 1 and 2.

Taxpayer A's Last Will and Testament, dated Date 3, and a codicil thereto, dated Date 4, were properly admitted to probate in Court C, County D, a court of competent jurisdiction. By Letters Testamentary dated Date 5, Taxpayer B was named the sole executrix of the estate of Taxpayer A.

Taxpayer A's Last Will and Testament, at Article Third, provides for a bequest to Taxpayer A's issue partially outright and partially in trust. Article Third of Taxpayer A's will also provides, in pertinent part, that should the residual amount under Article Fifth of Taxpayer A's will be less than the value of the spousal right of election under the laws of State E as a result of the Article Third bequest, the Article Third bequest shall be reduced accordingly to permit the residual bequest under Article Fifth to equal the spousal right of election.

Taxpayer A's will, at Article Fifth, provides that Taxpayer A's residual estate shall be paid outright to Taxpayer B, his surviving spouse.

Taxpayer A's will, at Article Seventh, names Taxpayer B the sole executrix of Taxpayer A's estate.

Taxpayer A's will, at Article Eighth, permits the executrix of his estate to make distributions upon any division of his estate in cash or in kind.

The value of Taxpayer A's IRA 1 at his date of death was Sum 1. The value of his IRA 2 at his date of death was Sum 2. Their total value was Sum 3 which exceeds Sum 4, the amount necessary to fund the residuary bequest under Article Fifth of Taxpayer A's last will and testament.

Taxpayer B, as executrix of Taxpayer A's estate, intends to request distributions from IRAs 1 and 2 which distributions will total Sum 4. The amounts distributed will then be paid to Taxpayer B, the residuary beneficiary of Taxpayer A's estate. Taxpayer B will then roll over the amounts distributed into an IRA set up and maintained in her name. The rollover will occur within 60 days of the date on which the distributions are made from IRAs 1 and 2 to Taxpayer A's estate.

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

1. The portion of IRAs 1 and 2 that are distributed to Taxpayer A's estate and subsequently paid to Taxpayer B as residuary beneficiary of Taxpayer A's estate, pursuant to Article Fifth of Taxpayer A's last will and testament, do not represent inherited IRAs within the meaning of Code section 408(d)(3)© with respect to Taxpayer B; and

2. that, pursuant to Code section 408(d)(3), Taxpayer B is not required to include in income for federal income tax purposes for the year in which distributed any amounts distributed from IRAs 1 and 2 to the executrix of Taxpayer A's estate who then pays them to

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Taxpayer B as the residual beneficiary of Taxpayer A's estate to the extent Taxpayer B rolls them over into an IRA set up and maintained in her name within 60 days of the date on which the amounts were distributed to the executrix of Taxpayer A's estate.

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.

Section 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4, 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 a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts

over, as described in (1) above) 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.

Q&A A-4 of section 1.408-8 of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse so elects.

Generally, if the proceeds of a decedent's IRA are payable to an estate, and are paid to the executrix of the estate who then pays them to the decedent's surviving spouse, 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 executrix of the decedent's estate with the sole authority to allocate assets among beneficiaries and the surviving spouse is also the residuary beneficiary of the decedent's estate.

In this case, Taxpayer B is the sole executrix of Taxpayer A's estate with the authority to allocate estate assets among estate beneficiaries. Taxpayer B is also the residuary beneficiary of Taxpayer A's estate. Taxpayer B is entitled, as residuary beneficiary of Taxpayer A's estate, to estate assets totaling Sum 4. As executrix of Taxpayer A's estate, Taxpayer B will allocate assets remaining in IRAs 1 and 2, totaling Sum 4, to Taxpayer B, as residuary beneficiary of Taxpayer A's estate. Said IRA 1 and 2 assets will then be paid to Taxpayer B, as residuary beneficiary of Taxpayer A's estate, who will then roll said IRA assets into an IRA set up and maintained in her name. The rollover will occur no later than the sixtieth day following the day on which they were paid to Taxpayer A's estate. Under this set of facts, the Service will not apply the general rule set forth above.

Thus, with respect to your ruling requests, the Service concludes as follows:

1. The portion of IRAs 1 and 2 that are distributed to Taxpayer A's estate and subsequently paid to Taxpayer B as residuary beneficiary of Taxpayer A's estate, pursuant to Article Fifth of Taxpayer A's last will and testament, do not represent inherited IRAs within the meaning of Code section 408(d)(3)© with respect to Taxpayer B; and

2. that, pursuant to Code section 408(d)(3), Taxpayer B is not required to include in income for federal income tax purposes for the year in which distributed any amounts distributed from IRAs 1 and 2 to the executrix of Taxpayer A's estate who then pays them to Taxpayer B as the residual beneficiary of Taxpayer A's estate to the extent Taxpayer B rolls them over into an IRA set up and maintained in her name within 60 days of the date on which the

amounts were distributed to the executrix of Taxpayer A's estate.

This ruling letter is based on the assumption that IRAs 1 and 2, referenced herein, either have 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, the original of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

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

Enclosures:

Deleted copy of letter ruling
Form 437