200242044

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 23 2002

UICs: 408.00-00
408.06-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

City D:

IRA X:

IRA Y:

Date 1:

Date 2:

Trust E:

Company G:

Institution H:

Dear :

This is in response to the , letter, submitted by your authorized representative on your behalf, in which you request a series of private letter rulings under sections 401(a)(9) and 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, 1927, died on Date 2, 1998, a resident of State C, having attained age 70 1/2. Although Taxpayer A had attained age 70 ½ as of the date of his death, he had not reached his "required beginning date" as that term is defined in Code § 401(a)(9)(C). Taxpayer A was survived by his wife, Taxpayer B.

At the time of his death, Taxpayer A was the owner of IRA X which he maintained with Company G in City D, State C. Trust E was the beneficiary of Taxpayer A's IRA X.

Taxpayer B is a co-grantor of Trust E. Furthermore, Taxpayer B is a co-trustee of Trust E.

Pursuant to Article 17 of Trust E, Taxpayer B, as surviving co-grantor of Trust E, has the right at any time without the consent of any person and without notice to any person other than the Trustee to withdraw the whole or any part of the trust estate by filing notice of such withdrawal with the Trustee.

Your authorized representative asserts that, during calendar year 1998, Taxpayer B signed an election form with Institution H, the administrator of Taxpayer A's IRA X, pursuant to which she agreed to receive distributions from IRA X in the form of periodic payments over five (5) calendar years beginning in 1999 and ending no later than December 31, 2003. As of the date of this ruling request, three payments (for calendar years 1999, 2000, and 2001) have been received and the Federal income tax with respect to said payments has been paid.

Taxpayer B, as a trustee of Trust E, intends to have the remaining balance in Taxpayer A's IRA X paid to Trust E. Furthermore, pursuant to Article 17 of Trust E, as sole remaining grantor of Trust E, Taxpayer B intends to demand payment of the distributed IRA X assets and roll over said assets into an IRA, IRA Y, currently set up and maintained in the name of Taxpayer B, with Company G. Said distribution and rollover will occur during calendar year 2002. Furthermore, the rollover will occur no later than the 60th day following the day on which said amounts are distributed from IRA X to Trust E.

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

1. That, with respect to Taxpayer B, IRA X is not an inherited IRA as that term is defined in Code § 408(d)(3)(C)(ii);

2. That Taxpayer B may be treated as the distributee or payee of IRA X for purposes of Code § 408(d)(3);

3. That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA X distribution which she will receive. Furthermore, as long as the rollover is timely, the IRA X distribution will not be included in Taxpayer A's gross income, pursuant to Code § 408(d)(1), with respect to calendar year 2002, the year in which the distribution will occur; and

4. That the Service's responses of the first three ruling requests, above, are not affected by the fact that Taxpayer B has received three annual distributions from IRA X as noted in the facts, above.

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 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). The Preamble to the "Final" Regulations indicates, in relevant part, that with respect to calendar year 2002 distributions, a taxpayer may rely upon the "Proposed" Income Tax Regulations published during 1987. This letter ruling is based on the 1987 "Proposed" Regulations.

Section 1.408-8 of the 1987 Proposed Income Tax Regulations (proposed 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-6 of section 1.408-8 of the proposed regulations provides that if a surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-4.

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.

§ 54.4974-2 of the proposed regulations, Q&A-3(c), provides that if the five year rule in § 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 enumerated section in paragraph (a) until the calendar year which contains the date five years after the date of the employee's death.

In general, with respect to this ruling request, the five-year rule, referenced above, applies in the case where an IRA holder dies prior to his required beginning date without having designated a beneficiary of his IRA.

In this case, as a result of the actions described above, the IRA X account balance remaining at of the date of this ruling request is payable to Trust E. Taxpayer B, Taxpayer A's surviving spouse, as co-trustee of Trust E, will initially request from the custodian of IRA X that the remaining IRA X balance be paid to Trust E, the beneficiary thereof. Subsequently, Taxpayer B, as sole surviving co-grantor of Trust E, will, pursuant to Article 17 of Trust E, demand payment of the IRA X balance and will then roll over the IRA X balance into IRA Y, an IRA previously set up and maintained in the name of Taxpayer B.

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). As such, Taxpayer B is eligible to roll over the remaining IRA X balance into IRA Y. Furthermore, pursuant to the 1987 proposed regulations, her rolling over said IRA X distribution will be treated as an election to treat the remaining portion of IRA X as her own IRA.

Thus, with respect to your ruling requests, we conclude as follows:

1. That, with respect to Taxpayer B, IRA X is not an inherited IRA as that term is defined in Code § 408(d)(3)(C)(ii);

2. That Taxpayer B may be treated as the distributee or payee of IRA X for purposes of Code § 408(d)(3);

3. That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA X distribution which she will receive. Furthermore, as long as the rollover is timely, the IRA X distribution will not be included in Taxpayer A's gross income, pursuant to Code § 408(d)(1), with respect to calendar year 2002, the year in which the distribution will occur; and

4. That the Service's responses of the first three ruling requests, above, are not affected by the fact that Taxpayer B has received three annual distributions from IRA X as noted in the facts, above.

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, IRA Y, set up and maintained in the name of 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).

Pursuant to a power of attorney on file in this office, the original of this letter ruling is being sent to your authorized representative(s).

Sincerely yours,

Frances V. Sloan

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

Enclosures:

Deleted copy of letter ruling
Form 437