Uniform Issue List: 408.03-01

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 26 2002

T:EP:RA:UK

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Legend:

Individual A = **********

Individual B = **********

Custodian C = **********

IRA X = **********
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Dear **********:

This is in response to a request for a ruling letter submitted by your authorized representative on December 31, 2001, as supplemented on August 13, 2002, August 14, 2002, and September 25, 2002, concerning a proposed rollover of funds from one individual retirement account into another individual retirement account under section 408(d)(3) of the Internal Revenue Code (the "Code").

The facts and representations on which the request is based are as follows:

Individual A was born on May 1, 1932, and died on January 20, 1989. At his death, Individual A had not attained age 70 ½. Individual B, who was born on June 1, 1932, is the surviving spouse of Individual A. At the time of his death, Individual A maintained IRA X with Custodian C, under an agreement that was entered into on April 26, 1982. Individual B currently reached age 70 ½.

Paragraph 2 of Article IV of IRA X provides that if the grantor dies before his/her entire interest in the trust is distributed to him . . . the entire interest of the remaining undistributed interest shall, within five years after the grantor's death or the death of the surviving spouse, be distributed in a single sum or applied to purchase an immediate

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annuity for the beneficiary or beneficiaries of the grantor or his/her surviving spouse. Paragraph 3(b) of Article IV in describing one of the exceptions provides that no distribution need be made if the beneficiary elects to treat the entire interest in the trust under the distribution rules in paragraph 1 of this Article. Paragraph 1 of Article IV provides that the entire interest of the grantor in the trust account must be, or commence to be, distributed before the close of the taxable year in which the grantor attains age 70 ½. Not later than the close of such taxable year, the grantor may elect, in a form and at such time as may be acceptable to the trustee, to have the balance of the trust account distributed in, among other methods, a single sum payment.

On February 14, 1986, Individual A and Individual B signed an agreement, which provides, in pertinent part, that, upon the death of either of the parties to this agreement, title to all property as defined in the preceding paragraph shall immediately vest in fee simple to the survivor of them. It has been represented that this agreement applies to Individual A's IRA X. It has been further represented that this agreement is being treated as the beneficiary designation with respect to said IRA X.

Pursuant to the above described agreement, Individual B intends to receive a full distribution of all amounts standing in IRA X and, within 60 days of receipt, roll over said amounts into an IRA set up and maintained in her (Individual B's) name. Said actions will occur not later than December 31, 2002.

It is represented that IRA X maintained by Individual A at his death meets the requirements of section 408(a) of the Code.

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

1. Individual B is eligible to roll over the distributions of the proceeds of the decedent's IRA into an IRA set up and maintained in her own name pursuant to section 408(d)(3) as long as the rollover of such distribution occurs no later than the 60th day from the date said IRA proceeds are received by Individual B.

2. Individual B will not be required to include in gross income for federal income tax purposes for the year in which the rollover is made timely any portion of the amounts transferred from the decedent's IRA to the IRA set up and maintained in Individual B's name.

Section 408(d)(1) of the Code provides that, except as otherwise provided, 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.

Section 408(d)(3)(A)(i) of the Code 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

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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 or she receives the payment or distribution.

Section 408(d)(3)(C)(i) of the Code 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.

Section 408(d)(3)(C)(ii) of the Code 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 Sections 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 the regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. However, with respect to calendar year 2002 distributions, a taxpayer may rely on the 1987 proposed regulations. This letter ruling assumes that the actions described herein will occur no later than December 31, 2002, and, thus, is based on the 1987 proposed regulations.

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

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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.

Under the above referenced proposed regulations under section 1.408-8, a surviving spouse may elect to treat the entire IRA of her deceased spouse as her own. Under said proposed regulations, Individual B, as sole beneficiary of all of Individual A's property, including IRA X, may do so by receiving a distribution from Individual A's IRA X and timely rolling said distribution into her IRA. The effect of Individual B's rolling over her IRA X distribution into an IRA maintained in her name is that Individual B becomes the owner of the IRA and the person for whose benefit the IRA is maintained.

Thus, based on the above, Individual B's rolling over said IRA X distribution into her IRA will constitute a rollover as that term is used in Code section 408(d)(3). Accordingly, with respect to you ruling requests, we conclude as follows:

1. Individual B is eligible to roll over the distributions of the proceeds of the decedent's IRA, IRA X, into an IRA set up and maintained in her own name pursuant to section 408(d)(3) as long as the rollover of such distribution is contributed to an IRA set up in the name of Individual B occurs no later than the 60th day from the date said IRA X proceeds are received by Individual B.

2. Individual B will not be required to include in gross income for federal income tax purposes for the calendar year 2002, the year in which the rollover is made timely any portion of the amounts transferred from the decedent's IRA to the IRA set up and maintained in Individual B's name.

This ruling is based on the assumption that IRA X established by Individual A, and the transferee IRA to be maintained in the name of Individual B, meet the requirements of section 408 of the Code at all times relevant to the transaction described herein.

As noted above, this letter ruling is based on the 1987 proposed regulations. Thus, it does not consider issues raised, if any, under either the proposed regulations concerning required distributions from individual retirement arrangements published in the Federal Register on January 17, 2001 (See also 2001-11 I.R.B. 865 (March 12, 2001)), or the temporary and final regulations published in 2002 which are referenced above.

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

The original of this ruling letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

/s/ Alan C. Pipkin

Alan C. Pipkin, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437