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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.00-00
408.03-00

JUL 29 2003

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

IRA X:

Date 1:

Date 2:

Date 3:

Date 4:

Company G:

Court K:

State L:

$Sum 1:

Dear Ms.

This is in response to the letter, submitted by your authorized representative on your behalf, in which you request a private letter ruling under section 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, 1936, died a resident of State L on Date 2, 2002 not having attained age 70 1/2. Taxpayer A was survived by his wife, Taxpayer B. In Taxpayer A's Last Will and Testament, dated Date 4, 1966, Taxpayer A gave, devised and bequeathed all of his personal and real property to his wife, Taxpayer B, if she were to survive him. On Date 3, 2002, Taxpayer B was appointed by Court K, State L, as the personal representative of Taxpayer A's estate.

At the time of his death, Taxpayer A was the owner of IRA X, maintained with Company G, which had a date of death value of $Sum 1.

As personal representative of Taxpayer A's estate, Taxpayer B will request Company G pay the remaining amount standing in IRA X to Taxpayer A's estate after which the IRA X proceeds will be paid to herself as sole beneficiary of Taxpayer A's estate. Upon receipt of the IRA X amounts, Taxpayer B will roll over said amounts into an individual retirement arrangement (IRA) set up and maintained in the name of Taxpayer B. Said distribution and rollover will occur during calendar year 2003, and the rollover will occur no later than the 60th day following the date on which the distribution from IRA X is made.

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

1. That the proceeds of IRA X which will be distributed to Taxpayer A's estate and subsequently paid to Taxpayer B as sole beneficiary of said estate, shall not constitute an inherited IRA within the meaning of Code § 408(d)(3)(C) with respect to Taxpayer B; and

2. That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA X distribution which she will receive into an IRA set up and maintained in her name. Furthermore, Taxpayer B is not required to include the IRA X proceeds in income for Federal Income Tax purposes for the year in which said IRA X proceeds are distributed and rolled over into Taxpayer B's IRA to the extent that the IRA X proceeds are timely rolled over into an IRA set up and maintained in the name of Taxpayer B.

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). § 1.408-8 of the "Final" 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 "Final" 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(trix) of the estate and also the sole beneficiary of the estate.

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 either a trust or an estate.

In this case, the IRA X account balance remaining at Taxpayer A's death is payable to Taxpayer A's estate pursuant to the terms of Taxpayer A's will. Taxpayer B, Taxpayer A's surviving spouse, is the sole personal representative of Taxpayer A's estate and the sole beneficiary under Taxpayer A's will. As personal representative, Taxpayer B will cause the IRA X proceeds to be paid to Taxpayer A's estate after which the IRA X amounts will be paid to Taxpayer B as the estate's beneficiary. Upon receipt, Taxpayer B intends to roll over the IRA X distribution into an IRA set up and maintained on her behalf. Said rollover will occur within 60 days of the date the IRA amounts are distributed from IRA X.

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

1. That the proceeds of IRA X which will be distributed to Taxpayer A's estate and subsequently paid to Taxpayer B as sole beneficiary of said estate, shall not constitute an inherited IRA within the meaning of Code § 408(d)(3)(C) with respect to Taxpayer B; and

2. That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA X distribution which she will receive into an IRA set up and maintained in her name. Furthermore, Taxpayer B is not required to include the IRA X proceeds in income for Federal Income Tax purposes for the year in which said IRA X proceeds are distributed and rolled over into Taxpayer B's IRA to the extent that the IRA X proceeds are timely rolled over into an IRA set up and maintained in the name of Taxpayer B.

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 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, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437