Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos: 408.02-01
408.03.00

Contact Person:

199913048

Telephone Number:

In Reference to:
OP:E:EP:T:3

Date:

JAN 5 1999

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

IRA 1:

Date 1:

Date 2:

Date 3:

Trust D:

Subtrust E:

Subtrust F:

Company G:

Individual H:

Individual I:

Individual J:

Court K:

Company L:

Sum 1:

Dear :

This is in response to the , letter, submitted by your authorized representative on your behalf, as supplemented by correspondence dated , 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, died on Date 2 having attained age 70 1/2. Taxpayer A was survived by his wife, Taxpayer B, who has been appointed by Court K as the personal representative of Taxpayer A's estate.

At the time of his death, Taxpayer A was the owner of IRA 1 which had a date of death balance of $440,510.00.

Your authorized representative asserts that prior to his required beginning date, as that term is defined in Code section 401(a)(9)(C)(i)(I), Taxpayer A named Trust D as the beneficiary of his IRA 1. Company G was named the trustee of Trust D. On Date 2, Company G executed a written declination to act as trustee of Trust D. Said declination was filed with Court K. On Date 3, Taxpayer B was named the special trustee of Trust D by Court K. The order appointing Taxpayer B as the special trustee of Trust D gave Taxpayer B the power to disclaim Trust D's interest in IRA 1, and also gave her the power to receive disclaimers by beneficiaries of Trust D of their interest(s) in IRA 1.

Your authorized representive has asserted, on your behalf, that Company G's written declination to serve as the trustee of Trust D constitutes a qualified disclaimer under State C law and is described in Code section 2518(b).

Article III of Trust D, in relevant part, provides for the creation of Subtrusts E and F. Company G was named the trustee of Subtrust F. On Date 2, Company G executed a written declination to act as trustee of Subtrust F. Said declination was filed with Court K. Said declination is also to be treated as a qualified disclaimer under the laws of State C.

On Date 3, which was prior to the expiration of the nine-month period which began with Date 2, the date of Taxpayer A's death, Taxpayer B, in her role of special trustee of Trust D, disclaimed (1) Trust D's right, title and interest in Taxpayer A's IRA 1 to the extent of Trust

D's interest in said IRA, and (2) any and all powers granted to the trustee with respect to said IRA.

Additionally, on Date 3, Taxpayer B, in her role as Taxpayer A's surviving spouse, and Taxpayers H, I, and J, the three surviving children of Taxpayer A, executed consents to the special trustee's disclaimer referenced above.

Finally, on Date 3, Taxpayer B, in her role as Taxpayer A's surviving spouse, and Taxpayers H, I, and J, the three surviving children of Taxpayer A, disclaimed all of their rights, title, and interest in Trust D to the extent of Trust D's interest in said IRA 1.

Your authorized representative has asserted on your behalf that all of the disclaimers referenced above are valid under the laws of State C.

As a result of the disclaimers referenced above, Trust D is not treated under the laws of State C as the beneficiary of Taxpayer A's IRA 1. Pursuant to Article I 1.3 of the governing instrument of IRA 1, since Taxpayer A did not name a contingent beneficiary of his IRA 1, the IRA 1 proceeds are to be paid to Taxpayer B as the surviving spouse of Taxpayer A.

Company L, the custodian of IRA 1, intends to distribute all of the proceeds of IRA 1 to Taxpayer B, the surviving spouse of Taxpayer A, no later than December 31, 1998. The single sum distribution will conform with the language of the governing instrument of IRA 1. Upon receipt of the distribution of the IRA 1 proceeds, Taxpayer B will roll over said distribution, except for Sum 1, into an IRA set up and maintained in her name no later than 60 days following the date that she receives the IRA 1 distribution.

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

That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA 1 distribution which she will receive, less Sum 1, an amount sufficient to satisfy the requirements of Code section 401(a)(9) for 1998, into an IRA set up and maintained in the name of Taxpayer B.

With respect to your ruling request, 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-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 <u>may elect</u> 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.

In this case, as a result of the actions described above, each of which constituted a qualified disclaimer, the IRA 1 account balance remaining at Taxpayer A's death is payable to Taxpayer B, Taxpayer A's surviving spouse, under the laws of State C. Upon receipt, Taxpayer B intends to roll over the IRA 1 distribution, less Sum 1, into an IRA set up and maintained on her behalf.

Under the facts stated above, Taxpayer B is to be treated as the payee and beneficiary of IRA 1 for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling request, we conclude as follows:

That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA 1 distribution which she will receive, less Sum 1, an amount sufficient to satisfy the requirements of Code section 401(a)(9) for 1998, into an IRA set up and maintained in the name of Taxpayer B.

This ruling letter assumes that IRA 1 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 1 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, copies of this letter ruling are being sent to your authorized representative(s).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437