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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos: 408.02-01
408.03-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T3

Date: DEC 20 1999

LEGEND:

Taxpayer A:

Taxpayer B:

IRA C:

Trust D:

Date E:

Date F:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated and , in which you request letter rulings 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 E, died on Date F survived by his spouse, Taxpayer B. Taxpayer A had attained age 70 1/2 prior to his death. Taxpayer B has not attained age 70 1/2.

At his death, Taxpayer A owned IRA C, an individuasl retirement annuity which your authorized representative asserts meets the requirements of Code section 408. Prior to his death, Taxpayer A named Trust D as the beneficiary of his IRA C. Taxpayers A and B were the settlors of Trust D.

Section 4.03 of Trust D provides, in pertinent part, that commencing immediately upon the decease of the first Settlor, all net income of the Trust shall be distributed by the Trustee in monthly, or other convenient installments,

but not less frequently than quarter-annually, to the surviving Settlor during his or her life.

Section 4.03 of Trust D further provides, in pertinent part, that the Trustee shall distribute to the surviving Settlor that portion or those portions of the principal of the Trust, up to the whole thereof, as the surviving Settlor may from time to time demand in writing during the surviving Settlor's lifetime and competency. So long as the surviving Settlor is competent, no limitation shall be placed by the Trustee on the surviving Settlor as to either the amount of or the reasons for invasion of principal from the Trust. Finally, upon the surviving Settlor's (Taxpayer B's) death, Taxpayer B will have a general power of appointment over the assets of Trust D.

Taxpayer B, as trustee of Trust D, intends to have the amounts remaining in IRA C at the death of Taxpayer A made payable to Trust D. As income and principal beneficiary of Trust D assets, Taxpayer B will then demand payment of the IRA C assets so that they may be contributed to an IRA set up and maintained in her name. Taxpayer B's proposed course of action will take the form of a direct transfer from the trustee of IRA C to the trustee of Taxpayer B's IRA.

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

(1) That IRA C is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i);

(2) that Taxpayer B may be treated as the distributee or payee of IRA C;

(3) that, to the extent that the amounts standing in IRA C are directly transferred to one or more IRAs set up and maintained in the name of Taxpayer B, then said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred.

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-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.

Generally, if the proceeds of a decedent's IRA are payable to a trust, are made payable to the trustee of the trust, and are then transferred by direction of the surviving spouse to an IRA set up and maintained in the name of the decedent's surviving spouse, said surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse shall, generally, not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, in a case where a trust is the beneficiary of a decedent's IRA and the surviving spouse is the sole trustee of the trust as well as the income beneficiary of the trust with the power to demand payment of a portion or all of the trust principal, and the surviving spouse, as trustee, requests payment of the remaining IRA assets, and, as income/principal beneficiary requests that the IRA assets be transferred, by means of a trustee to trustee transfer, into an IRA set up and maintained in her name, the surviving spouse will be treated as having received the IRA proceeds from the decedent and not from the trust.

In this case, Taxpayer B is the trustee of Trust D and the income beneficiary of Trust D assets who also has the unlimited right to demand payment of Trust D principal. By means of the course of action described above, Taxpayer B will cause the IRA C assets to be transferred into an IRA set up and maintained in her name. Under the circumstances

presented herein, the Service will not apply the general rule described above.

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

(1) That IRA C is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i);

(2) that Taxpayer B may be treated as the distributee or payee of IRA C;

(3) that, to the extent that the amounts standing in IRA C are directly transferred to one or more IRAs set up and maintained in the name of Taxpayer B, then said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred.

This ruling letter assumes that IRA C is or was qualified under Code section 408 at all times relevant thereto. It also assumes that the IRA (or IRAs) to be set up by Taxpayer B, which will hold the amounts transferred from IRA C, will also meet the requirements of Code section 408 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