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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UICs: 401.06-00
401.06-02

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T3 ID: 50-03192

APR - 4 2001

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

IRA T:

IRA U:

IRA V:

IRA W:

IRA X:

IRA Y:

IRA Z:

IRA S:

Date 1:

Date 2:

Date 3:

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Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Sum 1:

Sum 2:

Sum 3:

Sum 4:

Dear :

This is in response to the , request for letter rulings submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you, through your authorized representative, request a series of letter rulings under sections 408(d), 401(a)(9), and 4973 of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1925, died on Date 2, 1999, having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1929. Pursuant to the will of Taxpayer A, Taxpayer B was the sole executrix of Taxpayer A's estate.

The provisions of Taxpayer A's will provided, in relevant part, that after a bequest, not to exceed $250,000, to Taxpayer C, Taxpayer A's daughter, the rest, residue, and remainder of Taxpayer A's estate was to go to Taxpayer B if she survived Taxpayer A. Taxpayer B survived Taxpayer A.

At his death, Taxpayer A maintained seven individual retirement arrangements (IRAs), IRAs T through Z. The estate of Taxpayer A was the beneficiary of his IRAs T and U. Taxpayer B was the named beneficiary of his IRAs V through Z.

During calendar year 1999, Taxpayer A received a distribution from his IRA X in the amount of Sum 4 which, your authorized representative asserts, did not satisfy the requirements of section 401(a)(9) of the Internal Revenue Code which are applicable to IRAs pursuant to Code section 408(a)(6). Taxpayer A received no distribution during calendar year 1999 from either IRA V, IRA W, IRA Y, or IRA Z.

During calendar year 1999, Taxpayer B did not receive any distribution from any of the IRAs (IRAs T, U, V, W, X, Y, and Z) referenced above which were maintained by Taxpayer A at his death.

On or about Date 5, 2000, Taxpayer B received a distribution in the amount of Sum 1 from IRA Z of which she was the beneficiary as noted above. On or about Date 6, 2000, the proceeds of IRA T, in the amount of Sum 2, were received by the estate of Taxpayer A on behalf of Taxpayer B, the residuary beneficiary of Taxpayer A's estate. Additionally, on or about Date 6, 2000, the proceeds of IRA U, in the amount of Sum 3, were received by the estate of Taxpayer A on behalf of Taxpayer B, the residuary beneficiary of Taxpayer A's estate.

Taxpayer B died on Date 4, 2000, which date was after both Date 5 and Date 6. On or about Date 7, 2000, Taxpayer C was appointed successor executrix of the estate of Taxpayer A. On or about Date 8, 2000, Taxpayer C was appointed the executrix of the estate of Taxpayer B.

Prior to her date of death, Date 4, 2000, Taxpayer B had not received any distribution during calendar year 2000 from either IRA V, IRA W, IRA X, or IRA Y.

On or about Date 9, 2000, which date was after the date of death of Taxpayer B, Taxpayer C, in her capacity of executrix of the estate of Taxpayer B, established IRA S in the name of Taxpayer B, deceased, for the benefit of Taxpayer C, named beneficiary thereof. Additionally, on or about Date 9, 2000, Taxpayer C, in her capacity of executrix of the estate of Taxpayer B, contributed, as an attempted rollover, into IRA S the proceeds received by Taxpayer B on or about Date 5, 2000, in the amount of Sum 1, from IRA Z.

On or about Date 10, 2000, which date was after the date of death of Taxpayer B, Taxpayer C, in her capacities of executrix of the estate of Taxpayer A and of executrix of the estate of Taxpayer B, contributed, as attempted rollover contributions, into IRA S, the amounts which had been distributed from IRAs T and U to the estate of Taxpayer A on Date 6, 2000, as noted above.

Your authorized representative has asserted, on your behalf, that, prior to her death, Taxpayer B had not named or designated a beneficiary with respect to her interests, if any, in IRAs V through Z.

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

1. that Taxpayer C was timely and properly designated the beneficiary of IRA S; and

2. that Taxpayer C, in her capacity of beneficiary of IRA S, may elect to receive Code section 401(a)(9) minimum required distributions from said IRA S over her life expectancy.

With respect to your ruling requests, section 408(a)(6) of the Code provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(B)(ii) provides, in general, that if an employee dies prior to the date required distributions have begun without having designated a beneficiary of his plan (IRA) interest, distribution of such plan or IRA interest must be made within 5 years of the death of the employee (IRA holder).

Code section 401(a)(9)(B)(iii) provides, in general, for an exception to the above-referenced five-year rule. Under this exception, distributions may be made to a timely designated beneficiary over the beneficiary's life (or life expectancy) as long as said distributions begin not later than one year after the date of the employee's (IRA holder's) death.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer C-2 provided, in general, that there will be compliance with the above referenced

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five-year rule as long as distribution of the employee's (IRA holder's) entire interest is made by December 31 of the calendar year which contains the fifth anniversary of the death of the employee or IRA holder.

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer C-3 provided, in general, that there will be compliance with the above referenced exception to the five-year rule as long as distribution of the employee's (IRA holder's) entire interest is made to a non-spousal beneficiary beginning no later than December 31 of the calendar year following the calendar year of the employee's (IRA holder's) death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee (IRA holder) attains age 70 ½.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Questions and Answers D-1 and D-2 provided, in general, that designated beneficiaries are individuals who are designated by either a plan participant or IRA holder to receive benefits under a plan or from an IRA. Such designation may be made pursuant to plan provisions or by means of an affirmative election by the employee or IRA holder, or, in limited circumstances, by the surviving spouse of an employee or IRA holder, which election specifies the beneficiary.

Section 1.401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-2A provided, in pertinent part, that an estate may not be a designated beneficiary for purposes of Code section 401(a)(9).

Section 401(a)(9)-1 of the Proposed Income Tax Regulations, Question and Answer D-3, provided that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiary will be determined as of the plan participant's (IRA holder's) required beginning date.

The ability of a surviving spouse to either roll over the IRA of her deceased husband into an IRA set up and maintained in her name or to treat said IRA of the decedent as her own is personal to the surviving spouse and may not be exercised by the executrix of her estate after her death.

With respect to your ruling requests, as noted above, a beneficiary must be designated either by a plan participant, an IRA holder or, in limited circumstances, the surviving spouse of said participant or IRA holder. Neither the Code nor the proposed income tax regulations, promulgated thereunder, provide that the executrix of the estate of a surviving spouse who elected to treat IRAs of her deceased husband as her own may designate herself as the beneficiary of the surviving spouse's IRAs.

Thus, with respect to your ruling requests, the Service concludes as follows:

1. that Taxpayer C was not timely and properly designated the beneficiary of IRA S; and

2. that since Taxpayer C, is not the designated beneficiary of IRA S, she may not elect to receive Code section 401(a)(9) minimum required distributions from said IRA S over her life expectancy.

This ruling letter assumes that Taxpayer A's IRAs T, U, and Z had met the requirements of Code section 408(a) 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.

Please note that this letter ruling does not address the changes to sections 1.401(a)(9) and 1.408-8 of the proposed regulations which were published in the Federal Register on January 17, 2001.

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 Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437

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