



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 13 2003

UIL: 408.03-00

200406048

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

IRA X:

This is in response to the July 9, 2003 letter, submitted by your authorized representative on your behalf, in which you request a series of private 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 December 10, 1942, died on March 14, 2003. Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was February 14, 1942. At the time of his death, Taxpayer A maintained IRA X, an individual retirement arrangement. Taxpayer A was 60 years old at his death and had not reached the required beginning date for distributions from IRAs. The estate of Taxpayer A was named as the beneficiary of IRA X. Pursuant to Taxpayer A's will, dated March 31, 1998, Taxpayer B was named the sole residuary beneficiary and the sole executrix of Taxpayer A's estate. Pursuant to Letters Testamentary dated May 23, 2003, Taxpayer B was appointed executrix of Taxpayer A's estate.

After receiving a favorable letter ruling issued by the Internal Revenue Service, Taxpayer B, as sole executrix of Taxpayer A's estate, will receive a distribution of the entire proceeds of IRA X. As executrix of the estate, Taxpayer B will then pay the proceeds of IRA X to herself as residuary beneficiary of the estate. It is her intention to roll over said distribution, within 60 days of receipt thereof, into one or more IRAs maintained in her name. At all times subsequent to the death of Taxpayer A, IRA X has been maintained in the name of Taxpayer A. No distributions have been made from IRA X as of the date of this ruling request..

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

1. Taxpayer B will be treated, for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA X.

2. IRA X will not be treated as an inherited IRA, within the meaning of section 408(d)(3)(C) of the Code, with respect to Taxpayer B.
3. Taxpayer B will be eligible to roll over the proceeds from IRA X into an IRA set up and maintained in her own name, pursuant to section 408(d)(3)(A)(i) of the Code, as long as the rollover occurs no later than the 60th day from the date the proceeds are received by Taxpayer B in her capacity of executrix of Taxpayer A's estate..
4. Taxpayer B will not be required to include in her gross income for federal income tax purposes, for the year in which the distribution of the IRA X and subsequent rollover is made pursuant to the third requested ruling, any portion of the amounts timely rolled over from IRA X to an IRA set up and maintained in Taxpayer B's name.

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 executrix of Taxpayer A's estate and the sole beneficiary under Taxpayer A's will. As executrix, 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 residual beneficiary. Upon receipt, Taxpayer B intends to roll over the IRA X distribution into one or more IRAs 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. Taxpayer B will be treated, for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA X.
2. IRA X will not be treated as an inherited IRA, within the meaning of section 408(d)(3)(C) of the Code, with respect to Taxpayer B.
3. Taxpayer B will be eligible to roll over the proceeds from IRA X into an IRA set up and maintained in her own name, pursuant to section 408(d)(3)(A)(i) of the Code, as long as the rollover occurs no later than the 60th day from the date the proceeds are received by Taxpayer B in her capacity of executrix of Taxpayer A's estate.
4. Taxpayer B will not be required to include in her gross income for federal income tax purposes, for the year in which the distribution of the IRA X and subsequent rollover is made pursuant to the third requested ruling, any portion of the amounts timely rolled over from IRA X to an IRA set up and maintained in Taxpayer B's name.

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).

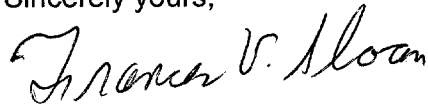
Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

200406048

The author of this ruling is

SE:T:EP:RA:T3 who may be reached at

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan".

Frances V. Sloan
Manager, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437