



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT - 6 2004

200453018

UICs: 408.02-01
408.03-00
9100.00-00

SE. T. EP. RA. T3

Legend:

Individual A =

Individual B =

Individual C =

Individual D =

Amount C =

Amount D =

Company G =

Trust T =

Trust U =

IRA X =

IRA Y =

State Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

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Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =

Dear Ms.

This is in response to a request dated [REDACTED] submitted on behalf of the co-trustees of a trust established by Individual B during her lifetime and by the co-appointed personal representatives of Individual B's estate by their authorized representative, as supplemented by correspondence dated [REDACTED] and [REDACTED] for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The authorized representative has submitted the following facts and representations in support of the ruling request:

Individual A, a resident of State Z, was the holder of IRA X with Company G at his death which occurred on Date 1, [REDACTED]. The date of death value of IRA X was Amount C. At his death, Individual A was married to Individual B. Individual A was also survived by his daughters, Individual C and Individual D. As of Date 1, [REDACTED], Individual A had attained age 70 ½.

On Date 2, [REDACTED], Individual A named Trust T, dated Date 3, [REDACTED] (as amended) and Trust U, dated Date 4, [REDACTED] (as amended) as the equal co-beneficiaries of his IRA X.

On Date 5, [REDACTED], Individuals C and D, the co-trustees of Trust T, executed a partial disclaimer of Trust T's interest in IRA X. On Date 6, [REDACTED], Individuals C and D, as co-trustees of Trust T, executed a complete disclaimer of Trust T's interest, totaling Amount D, in IRA X. Both the Date 5, [REDACTED], and the Date 6, [REDACTED], disclaimers occurred within nine (9) months of Date 1, [REDACTED], the date of Individual A's death. Both of the above-referenced disclaimers provide that Trust T had not received any interest in or benefit from IRA X. Your authorized representative has asserted that the above-referenced disclaimers were valid within the meaning of section 2518 of the Code. Pursuant to the IRA X document, as a result of the disclaimers, Individual B became the sole beneficiary of the disclaimed portion of IRA X.

As noted above, Trust U was the named beneficiary of 50% of IRA X. Individual B was the grantor of Trust U. An amendment to Trust U provides Individuals C and D replaced

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Individual B as the trustee(s) of Trust U. Article Seventh (A) of Trust U provides, in relevant part, that the Grantor, Individual B, shall have ...the power...to withdraw any part or all of this trust estate....

Upon the death of Individual A, Individual B was placed in the care of Individuals C and D. Documentation which accompanied this ruling request indicates that Individual B had seen at least six (6) physicians and been treated in at least two (2) hospitals between Date 1, [REDACTED] and Date 7, [REDACTED], the date on which Individual B died, for a series of ailments including, but not limited to, [REDACTED], [REDACTED], and [REDACTED]. Individual B had attained age [REDACTED] as of her date of death.

On or about Date 8, 2004, Individual B signed an IRA Account Application with Company G which established IRA Y in the name of Individual B. On said IRA Account Application, Individual B named Individuals C and D equal beneficiaries of her IRA. Documentation which supplemented this ruling request indicates that IRA Y remains in existence.

Individuals C and D, acting as co-trustees of Trust T, and on behalf of Individual B, directed Company G to distribute the non-IRA assets payable to Trust T to Individual B. However, Company G provided Individual B and Individuals C and D an IRA distribution/withholding form which all three signed on or about Date 9, [REDACTED] directing Individual A's IRA X be transferred to a non-IRA account held with Company G. On or about Date 10, [REDACTED], Company G made full distribution of Individual A's IRA X consisting of Amount C and interest thereon to Trust T and Trust U in equal shares, each share totaling Amount D.

As noted above, Individual B died on Date 7, [REDACTED] which was approximately six weeks after Date 10, [REDACTED], the date of the IRA X distribution. Prior to her death, because of her poor health and advanced age, Individual B was not aware that Individual A's IRA X had been distributed to Trusts T and U. Furthermore, Individuals C and D only became aware of said distribution after Individual B's death. As of the date of Individual B's death, and as of the date of this ruling request, the amounts distributed from IRA X on or about Date 10, [REDACTED], remained in a non-IRA account.

An affidavit which supplemented this ruling request and signed by Individual B's financial/investment adviser asserts that prior to her death, Individual B had demanded payment of the portion of IRA X distributed to Trust U as she was entitled to do under Article Seventh (A) of Trust U. However, there is no written evidence of such a demand.

It is represented that Amount C and the interest thereon distributed from IRA X on or about Date 10, [REDACTED], will be contributed to IRA Y, the IRA set up in Individual B's name, within 60 days from the date on which a waiver of the 60-day rollover period is granted.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution from IRA X of Amount C, and the distributed interest, because the failure to waive such requirement would be against equity or good conscience.

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With respect to your ruling request, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that paragraph (d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, in short, under circumstances that conform with the requirements of Code section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

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Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The issue presented in this case is whether Code section 408(d)(3)(I) and Rev. Proc. 2003-16 apply to a situation where a surviving spouse, eligible to roll over her deceased husband's IRA into a pre-existing IRA set up and maintained in her name, fails to do so under the circumstances described above including, but not limited to, her death within the 60-day period prescribed by Code section 408(d)(3)(A).

In this case, Individual B intended to place IRA X into IRA Y, which was set up by Individual B prior to her death, and which was maintained in her name. However, due to her poor health, Individual B relied upon Individuals C and D to effectuate her intent. As noted above, the actions of Individuals C and D resulted in IRA X being distributed to Trusts T and U and not being placed into IRA Y. Individual B died prior to being able to correct the Date 10, distribution of IRA X to Trusts T and U, by having such distributed amounts placed in IRA Y within the requisite 60 day period.

The Service notes with respect to this distribution of Amount D from IRA X to Trust T, that the trustees of Trust T had disclaimed Trust T's interest in Individual A's IRA X prior to said distribution. As a result, pursuant to the disclaimers, Individual B became the beneficiary of said interest with the right to roll over the distribution into either IRA Y or another IRA set up and maintained in her name.

Therefore, based on the above facts, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D, and interest thereon, from IRA X to Trust T. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover of Amount D, and interest thereon, into IRA Y, an IRA set up and maintained in the name of Individual B (Deceased). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into IRA Y will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

If the rollover is made into IRA Y, consistent with Individual B's Date 8, beneficiary designation, said IRA Y may be maintained in the name of Individual B for the benefit of Individuals C and D equal beneficiaries thereof.

With respect to the portion of IRA X, Amount D and interest thereon, distributed from IRA X to Trust U and placed in a non-IRA account with Company G, as described above, it is asserted that Individual B had demanded payment of said portion prior to her death. Making such demand was required for Individual B to have received the portion distributed to Trust U

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and, as distributee, to have then rolled over all or a part of the same portion into either IRA Y set up and maintained in her name. However, there is no written evidence of such a demand. Thus, since Individual B needed to have demanded payment of the portion of IRA X payable to Trust U prior to her death in order to have received it, and because there is no evidence that she did so, she may not be treated as the beneficiary of the portion of IRA X distributed to Trust U. Thus, the Service does not grant you an extension of time roll over the portion of IRA X distributed to Trust U into IRA Y set up and maintained in Individual B's name.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code

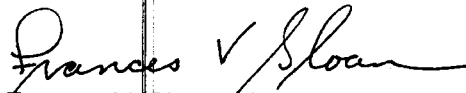
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact [REDACTED], Esquire (ID: [REDACTED]) at either [REDACTED] (Phone) or [REDACTED] (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose