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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC - 6 2004

UICs: 402.08-00 408.00-00
402.08-01 408.03-00
402.08-05

T:EP:RA

LEGEND:

Taxpayer A:

Taxpayer B:

Company C:

Company D:

Plan X:

Plan Y:

Plan Z:

Trust W:

IRA X:

Subtrust A:

Subtrust B:

Subtrust C:

Date 1:

Year 1:

Date 2:

Year 2:

Date 3:

Year 3:

Date 4:

Date 5:

Year 4:

Dear [REDACTED] :

This is in response to the [REDACTED], letter, submitted by your authorized representative, as supplemented by correspondence dated [REDACTED], in which you (Taxpayer B) request letter rulings concerning the application of sections 402(c) and 408(d)(3) of the Internal Revenue Code to the following facts and representations that your authorized representative asserts support your ruling request.

Taxpayer B is the surviving spouse of Taxpayer A, whose date of birth was Date 1, Year 1. Taxpayer A died on Date 2, Year 2, at age 53 not having attained his "required beginning date," as that term is defined in section 401(a)(9)(C) of the Code.

Taxpayer A was a participant in Plan X, Plan Y, and Plan Z which your authorized representative asserts are qualified under section 401(a) of the Code. Company C is the sponsor of Plans X, Y and Z

At his death, Taxpayer A owned and maintained IRA X with Company D. Your authorized representative has asserted that IRA X is an IRA described in Code section 408.

On or about Date 3, Year 3, Taxpayers A and B jointly executed Trust W.

On or about Date 4, Year 3, Taxpayer A named Trust W as the sole beneficiary of any death benefit payable under Plans X, Y and Z. Furthermore, on or about Date 4, Year 3, Taxpayer A also named Trust W as the sole beneficiary of his IRA X.

Trust W provides, in relevant part, that Taxpayers A and B were the joint trustors and joint trustees thereof. Furthermore, Article IX, paragraph A, of Trust W provides, in relevant part, that "...Upon the death, resignation or inability to act of either Trustee, the surviving spouse shall act as sole Trustee".

Article VI, paragraph N, of Trust W provides that the Trustee shall have the power "Upon any division or partial or final distribution of the Trust estate, to partition, allot and distribute the Trust estate in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution".

Trust W provides in Article IV, Paragraph G, that, upon the death of Taxpayer A, the Trustee is to divide Trust W into three subtrusts, Subtrust A, Subtrust B, and Subtrust C. Paragraph G(5) of Article IV of Trust W provides that after the death of Taxpayer A, Taxpayer B is entitled to the entire net income of Subtrusts A and B quarter-annually or more frequently. "If the Trustee deems the net income of these Trusts to be insufficient, the Trustee may also pay to Taxpayer B or apply for her benefit from time to time as much principal as the Trustee, in the Trustee's discretion, deems necessary for Taxpayer B's proper support, health and maintenance...." Paragraph G(6) of Article IV of Trust W provides "In addition to the distributions referred to above, the Trustee shall distribute to Taxpayer B such sums or property from the principal of Subtrust A, up to the whole thereof, as Taxpayer B may request in writing from time to time".

Pursuant to the authority granted her under the provisions of Trust W, Taxpayer B either has allocated or will allocate IRA X and the amounts payable from Taxpayer A's interests in Plans X through Z to Subtrust A of Trust W. On or about Date 5, Year 4, Taxpayer A's interests in Plans X through Z were paid to Taxpayer B pursuant to a demand she made upon the Trustee of Trust W, Taxpayer B. Within 60 days of Date 5, Year 4, Taxpayer B will roll over amount(s) not to exceed the value(s) of Taxpayer A's interests in Plans X through Z into one or more individual retirement arrangements (IRA) set up and maintained in the name of Taxpayer B.

With respect to Taxpayer A's IRA X, once said IRA X has been allocated to Subtrust A under Trust W, Taxpayer B will demand payment thereof and will then transfer, by means of a trustee-to-trustee transfer, said IRA X into one or more IRAs set up and maintained in the name of Taxpayer B.

Based on the above facts and representations, you request the following letter rulings:

1. That, with respect to Taxpayer B, Taxpayer A's IRA X is not an inherited IRA as that term is defined in Code section 408(d)(3)(C);.
2. That Taxpayer B may be treated as the payee or distributee of Taxpayer A's IRA X;

3. That Taxpayer B may be treated as the payee or distributee of Taxpayer A's interests in Plans X, Y and Z;
4. That, to the extent the amounts standing in Taxpayer A's IRA X are transferred to one or more IRAs set up and maintained in the name of Taxpayer B, by means of trustee-to-trustee-transfers, said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred; and
5. That, to the extent the amounts standing in Taxpayer A's accounts under Plans X, Y and Z, which were distributed to Taxpayer B on or about Date 5, Year 4, are timely rolled over into one or more IRAs set up and maintained in the name of Taxpayer B, Taxpayer A's surviving spouse, said amounts will not be included in Taxpayer B's gross income for the year of distribution and contribution (Year 4).

With respect to your third and fifth ruling requests, section 402(a) of the Code, in general, provides that amounts distributed from a retirement plan qualified within the meaning of Code section 401(a) are taxed under section 72 (relating to annuities).

Code section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)) but states that this maximum limitation does not apply to a distribution transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

- (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9)(c), and

(C) any distribution which is made upon the hardship of the employee.

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) of the Code qualified retirement plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(9) of the Code provides, generally, if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the regulations, Q&A 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Section 402(c)(3)(A) of the Code provides, generally, that, except as provided in subparagraph (B), section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

With respect to your first, second and fourth 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.

The Preamble to the "Final" Income Tax Regulations under section 401(a)(9) of the Code provides, in relevant part, that a surviving spouse may elect to treat an IRA of his/her deceased spouse as his/her own if the surviving spouse is the sole beneficiary of the IRA with an unlimited right to withdraw from the IRA. A surviving spouse may not elect to treat an IRA as his/her own if a trust is the beneficiary of the IRA. However, a surviving spouse may be eligible to roll over a distribution from an IRA of a decedent if the spouse actually receives the distribution regardless of whether the spouse is the sole beneficiary of the IRA (See Preamble at 67 Federal Register 18992-18993 (April 17, 2002)).

With respect to your ruling requests, generally, if either a decedent's qualified plan assets or a decedent's IRA assets pass through a third party, e.g. an estate or a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as

acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the qualified plan proceeds into her own IRA.

However, in certain situations the Service does not apply the general rule. With respect to the rule's application in this case, Trust W was the sole named beneficiary of Taxpayer A's interests in Plans X, Y, and Z, and also of his IRA X. After Taxpayer A's death, Taxpayer B became the sole trustee of Trust W with the authority to allocate Trust W assets in any way in which she deemed appropriate among the three subtrusts created under the terms of Trust W. Pursuant to said authority, Taxpayer B allocated Taxpayer A's qualified plan interests and his IRA X to Subtrust A created under the terms of Trust W.

Once so allocated, pursuant to the relevant language of Trust W, Taxpayer B demanded payment of Taxpayer A's interests in Plans X, Y, and Z. Payment of Taxpayer A's interests in Plans X, Y, and Z has been made to Taxpayer B. Taxpayer B will roll over Taxpayer A's interests in Plans X, Y, and Z into one or more IRAs set up and maintained in her name.

Additionally, Taxpayer B will demand payment of Taxpayer A's IRA X which payment will be forthcoming. Taxpayer B will then transfer, by means of trustee to trustee transfers, Taxpayer A's IRA X into one or more IRAs set up and maintained in her name.

Based on the above, the Service will not apply the general rule to the transactions described herein but instead will treat Taxpayer B, Taxpayer A's surviving spouse, as the distributee or payee of Taxpayer A's IRA X, and will not treat Taxpayer A's IRA X as an "inherited IRA" with respect to Taxpayer B. Additionally, the Service will treat Taxpayer B as a spouse described in section 402(c)(9) of the Code who is eligible to roll over the above described Plan X, Plan Y, and Plan Z interests into one or more IRAs set up and maintained in her name.

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

1. That, with respect to Taxpayer B, Taxpayer A's IRA X is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i); .
2. That Taxpayer B is treated as the payee or distributee of Taxpayer A's IRA X;
3. That Taxpayer B is treated as the payee or distributee of Taxpayer A's Interests in Plans X, Y and Z;

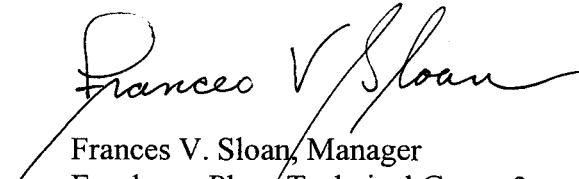
4. That, to the extent the amounts standing in Taxpayer A's IRA X are transferred, by means of trustee-to-trustee-transfers, to one or more IRAs set up and maintained in the name of Taxpayer B, said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred; and
5. That, to the extent the amounts standing in Taxpayer A's accounts under Plans X, Y and Z, which were distributed to Taxpayer B on or about Date 5, Year 4, are timely rolled over into one or more IRAs set up and maintained in the name of Taxpayer B, Taxpayer A's surviving spouse, said amounts will not be included in Taxpayer B's income for the year of distribution and rollover (Year 4).

This ruling assumes that Plans X, Y and Z either were or are qualified within the meaning of Code section 401(a), and their trusts tax-exempt under Code section 501(a), at all times relevant thereto. It also assumes that IRA X was, or is, qualified within the meaning of Code section 408 at all times relevant thereto. Finally, it assumes that any IRA(s) set up and maintained in the name of Taxpayer B to receive the rollover contribution(s) of the death benefits from Plans X, Y, and Z and of IRA X will meet the requirements of Code section 408(a).

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

The author of this ruling is _____, Esquire _____ who
may be reached at _____ (FAX).

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Form 437