



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 22 2005

UICs: 408.00-00
408.03-00

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

Company C:

Document E:

Trust W:

Subtrust A:

IRA X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Amount 1:

State A:

State B:

Dear [REDACTED] :

This is in response to the [REDACTED], letter, submitted by your authorized representative, as supplemented by correspondence dated [REDACTED], and [REDACTED], in which you (Taxpayer B) request letter rulings concerning the application of section 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, 1929. Taxpayer A died on Date 2, 2002, a resident of State A, at age 72 having attained his "required beginning date," as that term is defined in section 401(a)(9)(C) of the Code. Taxpayer B's date of birth was Date 3, 1942. Taxpayer B was not a United States citizen at Taxpayer A's death. Taxpayer B became a United States citizen on Date 7, 2004.

At his death, Taxpayer A owned an individual retirement account, IRA X, with Company C, which your authorized representative asserts is qualified within the meaning of section 408(a) of the Internal Revenue Code. The date of death value of IRA X was approximately Amount 1.

Taxpayer A executed Trust W on Date 6, 1997. It was subsequently amended and restated. Subtrust A was created under the terms of Article V of Trust W. Trust W was intended to comply with the laws of State B. On or about Date 4, 2002, Taxpayer A named SubTrust A as the beneficiary of his IRA X if Taxpayer B was not a United States citizen at his death

Trust W provides, at Article XV, subparagraph D, that upon the death of Taxpayer A, Taxpayers B and C became the joint trustees thereof. On or about Date 5, 2005, Taxpayer C resigned as co-trustee of Trust W. Furthermore, Article XV, subparagraph E, of Trust W provides that "If Taxpayer C fails to act or having qualified ceases to act as Trustee for any reason whatsoever of this trust/and or the trust to be administered under paragraph B, of Article V hereof, Settlor appoints Taxpayer D as

successor trustee in his place and stead". It has been represented that, in spite of efforts to find him, Taxpayer D has not been located and has not assumed the duties of co-trustee of Trust W. Thus, as of the date of this ruling request, Taxpayer B is the sole trustee of Trust W.

Article V, paragraph C, subparagraph 6, of Trust W provides that "The Trustee shall have the right, in his sole and absolute discretion, to withdraw any part or all of the remaining benefits of Settlor's Retirement Plan and/or the remaining property of Settlor's IRA or to direct that the remaining benefits of Settlor's Retirement Plan and/or the remaining property of Settlor's IRA be paid directly to Taxpayer B, and to give Taxpayer B the right to withdraw at any time all or any part of the such remaining benefits or remaining property".

Pursuant to the authority granted her under the above referenced provisions of Trust W and Subtrust A, by means of Document E dated Date 8, 2004, Taxpayer B, as sole trustee of Trust W and Subtrust A, has agreed to distribute IRA X outright to Taxpayer B, as beneficiary of SubTrust A.

With respect to Taxpayer A's IRA X, once said IRA X has been paid to Taxpayer B, Taxpayer B will then transfer, by means of one or more trustee-to-trustee transfers, said IRA X into one or more IRAs qualified within the meaning of Code section 408(a), 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, 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.

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.

Code section 408(d)(3)(E) provides, in summary, that this paragraph does not apply to any amount required to be distributed in accordance with subsection (a)(6) or (b)(3) (Code section 401(a)(9) required distributions).

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)).

The "Preamble" to the "Final" Regulations also provides that a surviving spouse may not elect to treat as her own the required distribution (to the extent not taken prior to death) for the calendar year of the IRA owner's death.

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, SubTrust A, created under the terms of Trust W, was the named beneficiary of Taxpayer A's IRA X. After Taxpayer A's death, and as a result of the actions described above, Taxpayer B became the sole trustee of Trust W and Subtrust A, with the authority to pay IRA X to herself as beneficiary of SubTrust A. Pursuant to said authority, Taxpayer B, as Trust W and Subtrust A trustee, has agreed to pay IRA X to herself as beneficiary.

Once so paid, 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.

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, 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.

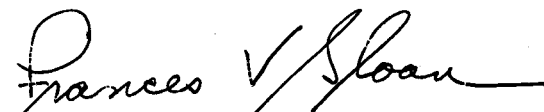
This ruling assumes that IRA X was, or is, qualified within the meaning of Code section 408 at all times relevant thereto. Finally, it assumes that any IRA(s) set up and maintained in the name of Taxpayer B to receive the rollover contribution(s) of the death benefits from IRA X will meet the requirements of Code section 408(a).

Please note the limitations on rollovers found in Code section 408(d)(3)(E) (above) which apply in this case.

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 (ID: _____) who may be reached at 202- - (phone) or 202- - (FAX).

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name and title.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437