

200639002



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL - 7 2006

UICs: 408.02-00
408.03-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Trust T:

Share U:

Date 1:

Date 2:

Date 3:

Date 4:

State U:

IRA X:

IRA Y:

Credit Union Z:

Bank AA:

Amount 1:

Amount 2:

Amount 3:

Dear

This is in response to the letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , and in which you request several letter ruling requests under section 408(d)(3) of the Internal Revenue Code ("Code"). The following facts and representations support said ruling request.

Taxpayer A, whose date of birth was Date 1, 1924, died on Date 2, 2004, a resident of State U, having attained age 70 ½. Taxpayer A was survived by his wife, Taxpayer B. At his death, Taxpayer A maintained individual retirement arrangements ("IRAs"), IRA X and IRA Y, with Credit Union Z. Trust T, dated Date 3, 2004, was the named beneficiary of Taxpayer A's IRAs X and Y. Taxpayer B and Taxpayer C, Taxpayer A's son, are the named trustees of Trust T.

Trust T, in relevant part, creates Share U intended to benefit Taxpayer B. Pursuant to the language of Trust T, Share U is to be funded with any IRAs of which Trust T is the beneficiary as the death of Taxpayer A. After any such IRAs are allocated to Share U, they are to be distributed outright and free of trust to Taxpayer B.

Subsequent to the death of Taxpayer A, Taxpayers B and C advised representatives of Credit Union Z that Taxpayer A had died and that Trust T was the beneficiary of his IRAs X and Y. In turn, Taxpayers B and C were advised that Credit Union Z could not administer a trust and that, pursuant to its rules and regulations, a trust could not be the beneficiary of an IRA that it sponsored. Credit Union Z advised Taxpayers B and C to withdraw amounts standing in IRAs X and Y and find a bank able to administer said IRAs with a trust as beneficiary. Following Credit Union Z's advice, on or about Date 4, 2005, Taxpayers B and C withdrew amounts from IRAs X and Y and deposited them in a trust account with Bank AA. The amount deposited in Bank AA was Amount 3 which consisted of Amount 1 withdrawn from IRA Y, and Amount 2 withdrawn from IRA X. However, since Taxpayers B and C did not advise Bank AA that the funds deposited were from IRAs, said trust account was not an IRA. It has been represented that, as of the date of this ruling request, Amount 3 remained in the Bank AA trust account.

Representatives of Credit Union Z did not advise Taxpayers B and C that they could have transferred, by means of trustee-to-trustee transfers, IRAs X and Y into other IRAs. Additionally, it has been represented that Credit Union Z did not advise Taxpayers B and C that their withdrawing amounts from IRAs X and Y in order to deposit them in a trust account gave rise to taxable distributions. Finally, it had been represented that Credit

Union Z did not advise Taxpayers B and C that any rollover of amounts distributed from IRAs X and Y into other IRAs had to be made within 60 days of receipt by the distributee(s).

It has been represented that Taxpayers B and C initially became aware that their receiving distributions from IRAs X and Y as co-trustees of Trust T gave rise to taxable consequences when they visited their tax advisor to obtain assistance with their tax returns.

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

1. That Taxpayer B was eligible to roll over Amount 3, which consisted of Amount 1 withdrawn from IRA Y and Amount 2 withdrawn from IRA X, into one or more IRA(s) set up and maintained in her name; and
2. That, pursuant to Code section 408(d)(3)(I) and Revenue Procedure 2003-16, Taxpayer is granted a period not to exceed 60 days as measured from the date of this letter ruling to roll over Amount 3 into one or more IRAs set up and maintained in her name.

With respect to your ruling requests, 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained

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)(C) of the Code provides, in general, that the IRA rollover rules do not apply to inherited accounts. The term "inherited account" does not apply to an IRA that is acquired by the surviving spouse of an IRA owner by reason of the death of the IRA owner.

Section 408(d)(3)(E) of the Code provides, in general, that distributions required to be made under either section 408(a)(6) or section 408(b)(3) may not be rolled over.

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.

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.

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the 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 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 of the estate and also the sole beneficiary of the estate.

The Preamble to the 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 and/or an estate.

In this case, the facts of this ruling request show that Taxpayer B is the surviving spouse of Taxpayer A. Furthermore, the facts indicate that Trust T was the named beneficiary of Taxpayer A's IRA X and IRA Y, and that relevant provisions of Trust T provide that said IRAs were to be allocated to Share U created under its terms. After so allocated, they were to be paid outright to Taxpayer B. Thus, under the facts of this case, IRAs X and Y were to be paid to Taxpayer B without any third party having any discretion with respect thereto. As a result, Taxpayer B would have been eligible to roll over distributions from IRAs X and Y.

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

1. That Taxpayer B was eligible to roll over Amount 3, which consisted of Amount 2 withdrawn from IRA Y and Amount 1 withdrawn from IRA X, into one or more IRA(s) set up and maintained in her name.

With respect to your second ruling request, although Taxpayer B could have rolled over distributions from IRAs X and Y into an IRA set up and maintained in her name she did not do so within the requisite 60-day period. Thus, the Service must determine if she is entitled to relief under Code section 408(d)(3)(I) and Rev. Proc. 2003-16.

With respect to said question, the Service notes that the advice given Taxpayers B and C by Credit Union Z regarding the rollover of the IRA amounts was incomplete and misleading. Credit Union Z required that the IRA funds be withdrawn but failed to advise Taxpayers B and C of everything that they had to do in order to accomplish a tax deferred transfer of the withdrawn IRA amounts to another financial institution. In short,

the Service notes that incomplete and misleading information directly related to the tax consequences of the transaction described.

Thus, based on the above facts and representations, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distributions of amounts from IRA X and IRA Y. Pursuant to this ruling letter, Taxpayer B is granted a period of 60 days as measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to the amount distributed from IRA X and from IRA Y (except as indicated below), to another IRA (or IRAs) described in Code section 408(a) set up and maintained in her name. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This letter assumes that IRAs X and Y were described within Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA(or IRAs) into which Amount 3 will be contributed will also be described in Code section 408(a).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts distributed from IRA X and IRA Y to the extent said amounts were required to be distributed with respect to calendar years beginning with calendar year 2005 and ending with the 2006 calendar year (the year of issuance of this letter ruling), if any.

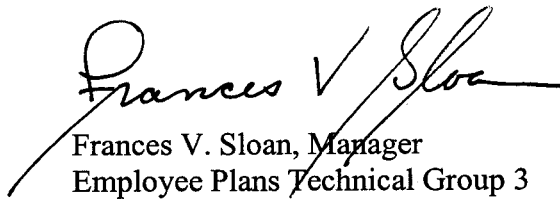
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

Pursuant to the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

If you wish to inquire about this ruling, please contact
SE:T:EP:RA:T3, I.D. at

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437