200027061

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos: **408.03-00**
408.06-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3

Date: APR 12 2000

LEGEND:

Taxpayer A:

Taxpayer B:

IRA C:

IRA D:

Date E:

Date F:

Date G:

State H:

Dear

This is in response to the , **letter written on your** behalf **by** your authorized representative, in which you, through your authorized representative, request several letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A died on Date E survived by his wife, Taxpayer B. Taxpayer A had attained age 70 ½ prior to his death.

At his death, Taxpayer A owned **two individual retirement arrangements** (IRAs), IRA C and IRA D, which your authorized representative asserts meet the requirements of Code section 408. Prior to his death, Taxpayer A named his estate as the beneficiary of his IRAs C and D. Taxpayer A married Taxpayer B on Date G which was after date F, the date on which he executed his last will and testament. Thus, Taxpayer A's last will and testament failed to mention Taxpayer B. In addition to Taxpayer B, Taxpayer A was survived **by several** children who are not the children of Taxpayer B.

Taxpayer A was domiciled in State H at his death. Section 2507(3) of the State **H** Probate Estates and Fiduciaries Code provides that if a testator marries after making a will, his surviving spouse shall receive the share of the estate to which she would have been entitled had the testator died intestate, unless the will gives her a greater share or unless it appears from the will that the will was made in contemplation of marriage to the surviving

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spouse. Under the intestate succession laws of State H, Taxpayer B is entitled to one-half of the estate of Taxpayer A.

Your authorized representative asserts, on your behalf, that, pursuant to the laws of State H, Taxpayer B's one-half share in the estate of Taxpayer A includes one-half of IRA C and one-half of IRA D. Furthermore, he asserts on your behalf that Taxpayer A's last will and testament contains no reference to any impending marriage of Taxpayer A.

Your authorized representative further asserts that, consistent with the laws of State H, Taxpayer B intends to request a distribution of one-half of IRA C and one-half of IRA D be made to her. Within sixty days of receipt of said distributions, she will roll over the IRA C and IRA D proceeds into one or more IRAs set up and maintained in her name.

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

1. That Taxpayer B's one-half share of IRA C and her one-half share of IRA D do not represent inherited IRAs within the meaning of Code section 408(d)(3)©(i);

2. that Taxpayer B may be treated as the distributee or payee of one-half of IRA C and one-half of IRA D; and

3. that, to the extent that a portion of the amounts standing in IRAs C and D, up to one-half of each IRA, are rolled over into one or more IRAs set up and maintained in the name of Taxpayer B, the said rolled over amounts will not be included in Taxpayer B's gross income for the year in which rolled over.

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.

Section 1.408-E of the Proposed Income Tax Regulations, Q&A A-4, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a) (9) (A) rather than those of section 401(a) (9) (B). Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d) (3) (A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Q&A A-4 of section 1.408-B of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse so elects.

Generally, if the proceeds of a decedent's IRA are payable to an estate by direction of the decedent, and are then distributed to the decedent's surviving spouse, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse, generally, shall not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, in a case where an estate is the beneficiary of a decedent's IRA but the surviving spouse of the decedent is entitled under the intestate laws of the state of domicile of the decedent to receive an intestate share of the decedent's estate (or an amount equal to said intestate share) rather than the amount to which she was entitled under decedent's will, and the surviving spouse elects said intestate share, to the extent said share consists of IRA assets, the IRA assets will be treated as having been received by the surviving spouse directly from the decedent and not from his estate. Thus the IRA assets

which constitute part of the surviving spouse's intestate share will be eligible for rollover treatment under Code section 408(d) (3).

In this case, pursuant to the laws of State H, the state of domicile of Taxpayer A at his death, Taxpayer B will receive one-half of IRAs C and D. She will then roll said IRA assets into one or more IRAs set up and maintained in her name. The rollover(s) will occur no later than the sixtieth day following the day on which Taxpayer B will receive the IRA C and IRA D proceeds. Under this set of facts, the Service will not apply the general rule set forth above.

Thus, with respect to your ruling requests, the Service concludes as follows:

1. That Taxpayer B's one-half share of IRA C and her one-half share of of IRA D are not inherited IRAs as that term is defined in Code section 408(d) (3)©(I);

2. that Taxpayer B may be treated as the distributee or payee of one-half of IRA C and one-half of IRA D; and

3. that, to the extent that a portion of the amounts standing in IRAs C and D, up to one-half of each IRA, are rolled over into one or more IRAs set up and maintained in the name of Taxpayer B, the said rolled over amounts will not be included in Taxpayer B's gross income for the year in which rolled over.

This ruling letter is based on the assumption that IRAs C and D, referenced herein, either have complied or will comply with the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's rollover IRA(s) will comply with the requirements of Code section 408(a) at all times relevant thereto.

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

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager,
Employee **Plans**
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of **letter ruling**
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