



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200611037

DEC 22 2005

Uniform Issue List: 408.01-00

SE.T. EP. RA. T3

Legend:

Decedent A =
Estate B =
Date M =
Date N =
Date O =
Date P =
IRA X =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated August 29, 2005, concerning the proper rollover treatment of a distribution from Decedent A's individual retirement account (IRA X) under section 408(d)(3) of the Internal Revenue Code (Code). Correspondence dated November 28, 2005, supplemented the request.

Your authorized representative has submitted the following facts and representations:

You were born on Date M, 1936, and you were married to Decedent A at the time of his death. Decedent A was born on Date N, 1931, and died on Date O, 2005. On

Date P, 2003, Decedent A opened IRA X (a rollover IRA). Decedent A named his estate, Estate B, as the beneficiary of his IRA X.

In the will of Decedent A you were named as sole residuary beneficiary thereof provided that you survived Decedent A, and except to the extent that you disclaimed any interest in Decedent A's estate. It is represented that you have not, nor will you, disclaim any interest in the estate of Decedent A. You were also appointed as sole executrix of Decedent A's will.

As executrix, you will cause the IRA X proceeds to be paid to Decedent A's estate after which you will pay them to yourself as the sole beneficiary of the estate. You will then transfer the proceeds directly from the estate to an IRA in your name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X to Decedent's estate.

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

1. That with respect to you, IRA X does not constitute an inherited IRA;
2. that the transfer from IRA X to an IRA maintained in your name, will qualify as a tax deferred transaction within the meaning of 408(d)(3); and
3. that the transfer will not result in income to either the estate of Decedent A or to you as surviving spouse in the year of the transfer (2005) under section 408(d)(1).

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.

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(trix) 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 or an estate.

In this case, the IRA X account balance remaining at Decedent A's death is payable to Decedent A's estate. You, Decedent A's surviving spouse, are the executrix of Decedent A's estate and the sole residuary beneficiary of the Decedent' A's estate. As executrix, you will cause the IRA X proceeds to be paid to Decedent A's estate after which you will pay them to yourself as the sole residuary beneficiary of the estate. You will then transfer the proceeds directly from the estate to an IRA in your name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X to Decedent A's estate.

Under the facts stated above, You are to be treated as the payee and beneficiary of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude as follows:

1. That with respect to you, IRA X does not constitute an inherited IRA;
2. that the transfer from IRA X to an IRA maintained in your name, will qualify as a tax deferred transaction within the meaning of 408(d)(3); and
3. that the transfer will not result in income to either the estate of Decedent A or to you as surviving spouse in the year of the transfer (2005) under section 408(d)(1).

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by you will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that your rollover of the IRA X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

This ruling 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 by others as precedent

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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call ***** (ID **-*****) at (***) ***-**** (not a toll free number).

Sincerely Yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

CC: