



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

200532060

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 19 2005

UICs: 401.06-00
401.06-02
408.03-00
408.06-00

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Company C:

State D:

Disclaimer 1st:

Disclaimer 2nd:

IRA X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Section 1:

Dear [REDACTED] :

This is in response to the [REDACTED], letter, submitted by your authorized representative, in which you (Taxpayer B) request letter rulings concerning the application of sections 408(d)(3) and 401(a)(9) of the Internal Revenue Code to the

200532060

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, 1950. Taxpayer A died on Date 2, 2003, at age 53, a resident of State D. At his death, Taxpayer A had not attained his "required beginning date," as that term is defined in section 401(a)(9)(C) of the Code. Taxpayer A was survived by his spouse, Taxpayer B, whose date of birth was Date 3, 1965. Taxpayer A died without issue.

On Date 5, 2003, Taxpayer B was named the "single personal representative" of Taxpayer A's estate.

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

Prior to his death, Taxpayer A had named Taxpayer C, as the beneficiary of his IRA X. At Taxpayer A's death, Taxpayer C was his ex-wife but still remained the named beneficiary of his IRA X.

On or about Date 4, 2004, Taxpayer C executed two (2) disclaimers, Disclaimer 1st and Disclaimer 2nd, with respect to her beneficiary interest in Taxpayer A's IRA X. Both Disclaimer 1st and Disclaimer 2nd referred to IRA X. Each disclaimer indicated an intent to comply with the requirements of Code section 2518. Additionally, each disclaimer indicated that Taxpayer C had not accepted any interest in IRA X. Furthermore, as provided in said disclaimers, with respect to the disposition of IRA X, Taxpayer C is treated as if she had predeceased Taxpayer A.

It has been represented that Disclaimer 1st and Disclaimer 2nd are valid under the laws of State D.

Date 4, 2004 is within nine (9) months of Date 2, 2003 (Taxpayer A's date of death).

Taxpayer A died intestate. Pursuant to Disclaimer 1st and Disclaimer 2nd, his IRA X became subject to the intestate laws of State D. Pursuant to section 1 of the Statutes of State D, Taxpayer B is entitled to the entire intestate estate of Taxpayer A.

With respect to Taxpayer A's IRA X, Taxpayer B, as sole personal representative of the estate of Taxpayer A, will receive the full amount standing thereunder and then distribute said IRA X proceeds to herself. Taxpayer B will then contribute, as a rollover contribution, the IRA X proceeds into an IRA set up and maintained in her name. Said

200532060

rollover will occur no later than the 60th day from the date said IRA X proceeds are received by Taxpayer B in her capacity of sole personal representative of Taxpayer A's estate. Said transaction will occur no later than December 31, 2005.

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 timely rolled over into an IRA set up and maintained in the name of Taxpayer B, said rolled over amounts will not be included in Taxpayer B's gross income for the year in which they are distributed from Taxpayer A's IRA X (and the year in which rolled over); and
4. That, no portion of the IRA X balance distributed to Taxpayer B will constitute a "required distribution", as defined in Code section 401(a)(9) made applicable to IRAs pursuant to Code section 408(a)(6).

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 that the rollover rules of Code section 408(d) do not apply to any amount required to be distributed pursuant to Code section 408(a)(6).

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

The Preamble to the "Final" Income Tax Regulations under section 401(a)(9) of the Code also 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. Furthermore, a surviving spouse is not eligible to treat a decedent's IRA as her own if the IRA passes to an estate of which the spouse is the beneficiary (See Preamble at 67 Federal Register 18992-18993 (April 17, 2002)).

However, under certain circumstances, 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.

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, as a result of the disclaimers referenced herein, Taxpayer A's estate became the beneficiary of his IRA X at his death. Taxpayer B, Taxpayer A's surviving spouse, is the sole personal representative of his estate and the sole beneficiary thereof under the Statutes of State D. As sole personal representative, Taxpayer B will request distribution of the IRA X proceeds which she will then pay to herself as sole beneficiary of Taxpayer A's estate. Taxpayer B will then roll over, within 60 days of the date IRA X was received by her as personal representative, Taxpayer A's IRA X into an IRA 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 timely rolled over to an IRA set up and maintained in the name of Taxpayer B, said rolled over amounts will not be included in Taxpayer B's gross income for the year in which distributed (and transferred).

With respect to your fourth ruling request, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code section 401(a)(9)(B)(iii) provides, in general, that if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

Code section 401(a)(9)(C) provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2.

Section 1.401(a)(9)-4 of the "Final" regulations, Question and Answer-2, provides that a designated beneficiary is an individual who is designated as a beneficiary under the plan whether or not the designation under the plan was made by the employee.

Section 1.401(a)(9)-4 of the "Final" regulations, Question and Answer-3, provides that only individuals may be designated beneficiaries for purposes of Code section 401(a)(9). An estate may not be a designated beneficiary. If a person other than an individual is named as a beneficiary, the employee will be treated as having no designated beneficiary for purposes of Code section 401(a)(9).

Section 1.401(a)(9)-4 of the "Final" regulations, Question and Answer-4, provides, in relevant part, that a person who disclaims an interest in a plan or IRA no later than September 30th of the calendar year following the calendar year of death by means of a disclaimer that satisfies Code section 2518 thereby allowing other beneficiaries to receive the benefit in lieu of that person is disregarded for purposes of determining who is the designated beneficiary for purposes of Code section 401(a)(9).

In this case, Taxpayer C timely disclaimed her interest in Taxpayer A's IRA X. Taxpayer A's estate then became entitled to Taxpayer A's IRA X. As a result, no Code section 401(a)(9) designated beneficiary existed with respect to Taxpayer A's IRA X, and the "5-year rule" of Code section 401(a)(9)(B)(ii) applies with respect to distributions from Taxpayer A's IRA X.

Section 1.401(a)(9)-3 of the "Final" regulations, Question and Answer-2, provides that in order to satisfy the 5-year rule of Code section 401(a)(9)(B)(ii), the employee's/IRA holder's entire interest must be distributed by the end of the calendar

year which contains the fifth anniversary of the date of death of the employee/IRA holder.

Section 54.4974-2 of the "Final" Regulations, Q&A-3(c), provides, in relevant part, that if the 5-year rule of Code section 401(a)(B)(ii) applies to distributions from a plan or IRA, no amount is required to be distributed from said plan or IRA until the calendar year which contains the date 5 years after the death of the employee/IRA holder. In such year, the full amount is required to be distributed.

In this case, Taxpayer A died on Date 2, 2003 without having a Code section 401(a)(9) designated beneficiary of his IRA X. Thus, full distribution of his IRA X must be made no later than December 31, 2008, but no distribution from his IRA X is required to be made with respect to any calendar year prior to calendar year 2008. Taxpayer B's proposed distribution and rollover will occur prior to December 31, 2005.

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

4. That, no portion of the IRA X balance distributed to Taxpayer B will constitute a "required distribution", as defined in Code section 401(a)(9) made applicable to IRAs pursuant to Code section 408(a)(6).

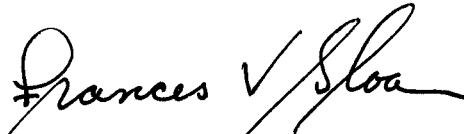
This ruling assumes that IRA X was, or is, qualified within the meaning of Code section 408 at all times relevant thereto. Finally, it assumes that any IRA(s) set up and maintained in the name of Taxpayer B to receive the rollover contribution(s) of the death benefits of IRA X will meet the requirements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

200532060

The author of this ruling is [REDACTED], Esquire (ID: [REDACTED]) who may
be reached at [REDACTED] (phone) or [REDACTED] (FAX).

Sincerely yours,

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

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437