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

200620028

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

FEB 21 2006

SE: T: EP: RA: T3

Legend:

Taxpayer A =

Taxpayer B =

Taxpayer C =

Individual C =

Individual D =

Individual E =

Trust T =

Subtrust C =

Subtrust D =

State E =

Amount F =

Bank G =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

Account Management H =

Account Management I =

Account Management J =

IRA X =

Section Y =

Section Z =

Dear :

This letter is in response to a ruling request dated , and supplemented by correspondence dated , , , , , , , , , , , , , , , and , submitted by your authorized representative, in which you request a ruling pursuant to which the Internal Revenue Service ("Service") will waive the 60-day rollover requirement contained in section 408(d)(3)(A)(i) of the Code.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is the surviving spouse of Taxpayer B. At the time of his death, on Date 2, , Taxpayer B was 66 years of age. Taxpayer A's date of birth was Date 1, . Taxpayer B owned an individual retirement account ("IRA"), IRA

X, and had been taking distributions from it. The date of death value of IRA X was Amount F.

On or about Date 3, , Taxpayer B executed Trust T. Trust T, which your authorized representative has asserted is a valid trust under the laws of State E, is the named beneficiary of IRA X. Subtrust C and Subtrust D were created pursuant to the provisions of Trust T.

Your authorized representative has asserted that Trust T, in relevant part, provided that upon the death of Taxpayer B, Taxpayer A became the sole successor trustee of Trust T. The provisions of Trust T provided, in relevant part, that Taxpayer A, as sole trustee, would transfer trust property to Subtrust D that would equal the exemption equivalent for Federal estate tax purposes. The remaining balance of the Trust T estate would be held in Subtrust C.

During her lifetime, Taxpayer A is the sole beneficiary of Subtrust C. The provisions of Subtrust C provide for the payment of net income, at least annually, to Taxpayer A and as much principal as Taxpayer A demands in writing to Taxpayer A during her lifetime. Accordingly, your authorized representative argues that Subtrust C should be treated as Taxpayer A's own property.

Your authorized representative has asserted that Subtrust C was created in accordance with the provisions of section 678 of the Code and was intended to be treated as a "Grantor Trust". Such treatment would require that the distributions from IRA X be shown as taxable income on Taxpayer A's personal income tax return (Form 1040).

Subtrust D provides for the payment of net income and as much principal as the trustee believes desirable for her reasonable support and health considering her other resources known to the trustee to Taxpayer A during her lifetime. Upon the death of Taxpayer A, Subtrust D is to be terminated and the then principal remaining, along with accrued or undistributed net income, shall be distributed to Taxpayer B's descendants per stirpes. Subtrust D indicates that, at the time of signature, Taxpayer B's only child was Taxparer C.

In summary, the distribution provisions of Subtrust C differ from those found under Subtrust D.

Article Fourth of Trust T provides, in summary, that the trustee shall pay from the Trust Estate, directly or otherwise, all of the debts, expenses of estate administration, and taxes associated with the death of Taxpayer B. The provisions of Trust T do not "wall off" qualified retirement arrangements, including

IRAs, from Article Fourth thereof. However, your authorized representative has indicated that State E does have a Statute that "walls off" IRAs from being used to defray estate expenses and taxes associated with an estate. In this regard, Section Y of the State E Statutes provides as follows:

> "A Debtor's interest in or right, whether vested or not, to the assets held in or to receive pensions, annuities, benefits, distributions, refunds of contributions, or other payments under a retirement plan is exempt from judgment, attachment, execution, distress, for rent, and seizure for the satisfaction of debts if the plan is (i) intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as now or hereafter amended..."

Subparagraph (b) of Section Y provides, in relevant part, that a "Retirement Plan" includes an individual retirement account.

Your authorized representative asserts that the intent of the estate plan was to allow Taxpayer A to take IRA X distributions based upon Taxpayer B's life expectancy (as needed) and then to make a trustee to trustee, lump sum, transfer of the remaining balance in the account to Subtrust C. In this regard, your authorized representative asserts that, if Taxpayer B's estate plan had been effectuated, Subtrust D would not have been funded, and IRA X would have been allocated to Subtrust C. Furthermore, your authorized representative has asserted on your behalf that the estate plan would have minimized federal taxes and that allocating IRA X to Subtrust C was consistent with Section Z of the State E Statutes (below).

Taxpayer A was and is the sole beneficiary of Subtrust C and the sole successor trustee of Trust T and the subtrusts created thereunder. As sole trustee, Taxpayer A intended to allocate IRA X to Subtrust C. Once allocated to Subtrust C, pursuant to its provisions, Taxpayer A intended to demand payment of the entire IRA X and contribute, as a rollover contribution, the proceeds of the IRA X distribution into another IRA set up and maintained in the name of Taxpayer A. Said rollover was intended to be completed within 60 days of the date of distribution from IRA X to Trust T and Subtrust C. Your representative asserts that this transfer was intended to be characterized as a non-taxable transfer.

Subsequent to Taxpayer B's death, IRA X was moved in a trustee to trustee transfer from Account Management H to Account Management I which is affiliated with Account Management J and which, after the transfer, became Taxpayer A's account broker.

Your authorized representative has asserted, on your behalf, that one or more meetings to discuss the way to effectuate Taxpayer A's estate plan occurred between Individual C, who is represented to be associated with Account Management I and employed by Bank G, Individual D, Taxpayer A's counsel, and Individual E, a certified public accountant (CPA) representing Taxpayer A. At these meetings, Individual C was advised that Taxpayer A wanted the amount standing in IRA X to be transferred, by means of a trustee-to-trustee transfer, into another IRA that would benefit Subtrust C of which Taxpayer A was sole trustee and the beneficiary holding an unlimited right to wiothdraw principal therefrom.

It has been represented that Individual C was also advised that the proposed transaction involving IRA X had to insure that no taxable distribution resulted therefrom.

On or about Date 4, 2002, due to a misunderstanding of the above described estate plan, Taxpayer A was advised by Individual C to execute an IRA Distribution Request Form for Non-Spouse Beneficiary, which requested that Account Management J distribute the IRA X account balance to Taxpayer A. Taxpayer A executed this document in the belief that doing so would transfer the account balance in IRA X, in accordance with the estate plan described above, and not result in a taxable distribution to her. It has been represented that the request for a distribution was contrary to the estate plan and was the result of a misunderstanding by the representative(s) of Account(s) Management I and J. It has also been represented that Individual C approached Taxpayer A without notice to either Individual D or Individual E.

Subsequent to executing the Form described above, a distribution was made and Taxpayer A received a Form 1099-R for Amount F, which she placed with other tax related documents. The error was discovered by her tax preparer, Individual E, in Month 1, 2003.

Your authorized representative has asserted, on your behalf, that IRA X was payable to Subtrust C (through decedent's, Taxpayer B's, Declaration of Trust, Trust T) for the benefit of Taxpayer A. Furthermore, your authorized representative states that Subtrust C, as the current owner of IRA X, has not encumbered IRA X in any way. The IRA X account balance remains intact.

Section Z of the State E Statutes provides, in relevant part, that "...In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, the trustee may consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts created…".

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount F, because failure to waive such requirement would be against equity or good conscience.

With respect to your ruling requests, section 408(a) provides the general requirements applicable to IRAs. Section 408(a)(6), in summary, provides that the "minimum required distribution" rules of Code section 401(a)(9) apply to IRAs.

Section 401(a)(9)(B)(iii) of the Code provides that a qualified plan and IRA must provide that, in the case where a plan/participant/IRA owner dies prior to his "required beginning date" having designated a beneficiary of his plan interest/IRA, required distributions must begin no later than 1 year after the date of death (with an exception applicable to surviving spouses who are sole beneficiaries) and the entire interest of the employee must be distributed over the life of such beneficiary (or over the life expectancy of such beneficiary).

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.

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)(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 this paragraph (paragraph (d)) does not apply to any amounts required to be distributed pursuant to subsection (a)(6) or (b)(3).

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.

In this case, the Service notes that Taxpayer A was the sole trustee of Trust T and the subtrusts created thereunder with the authority to allocate trust assets between said subtrusts. Thus, Taxpayer A could have allocated IRA X to Subtrust C, and, as asserted by her authorized representative, was obligated to do so to effectuate Taxpayer B's estate plan which was to benefit Taxpayer A.

Furthermore, consistent with the estate plan, once Taxpayer A allocated said IRA X to Subtrust C she, as sole beneficiary of said Subtrust C, could have demanded payment of said IRA X.

Thus, based on the above, Taxpayer A could have rolled over said IRA X into an IRA set up and maintained in her name. However, as noted above, Taxpayer A 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.

In this regard, the Service notes the representations made on behalf of Taxpayer A to the effect her counsel and CPA advised Individual C, representing the custodian of IRA X, that Taxpayer A wanted to incur no immediate tax consequences in effectuating her husband's estate plan, and that the IRA X assets were to remain IRA assets. In spite of said instructions, and without notice to either said counsel or said CPA, Individual C advised Taxpayer A to sign a form requesting that the full amount standing in IRA X be distributed to Taxpayer A. Relying upon this advice, Taxpayer A signed the form and the distribution occurred. Taxpayer A did not understand the tax consequences of her action until her CPA, Individual E, advised her of said consequences. The discovery occurred after the 60-day rollover period applicable to the distribution of IRA X had expired.

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 distribution of IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days 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 (except as indicated below), to another IRA (or IRAs) described in Code section 408(a). 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).

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 to the extent said amounts were required to be distributed with respect to any calendar year beginning with the calendar year and ending with the (the year of issuance of this letter ruling) calendar year, if any. Nor does this letter ruling reach a determination as to whom, if anyone, was Taxpayer B's designated beneficiary, within the meaning of Code section 401(a)(9) and section

1.401(a)(9)-4 of the "Final" Income Tax Regulations, Questions and Answers-3 and 4, of his IRA X at the time of his death.

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

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437
Copy of Notification Letter (Form 1155) to Authorized Representative