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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 17 2004

UICs: 408A.00-00
408.03-00
408.06-00
4973.00-00

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Roth IRA X:

Company D:

State E:

Year 1:

Date 1:

Year 2:

Date 2:

Year 3:

Value 1:

Trust W:

Subtrust A:

Subtrust B:

Dear :

This is in response to the letter ruling request dated _____, in which your authorized representative, on your behalf, requests several letter rulings under sections 408A and 4973 of the Internal Revenue Code. The following facts and representations support your ruling request.

During Year 2, Taxpayer A "converted" a traditional individual retirement arrangement (IRA) described in Code section 408 into a Roth IRA, Roth IRA X, described in Code section 408A. Company D was and remains the custodian of Roth IRA X.

Taxpayer A died on Date 2, Year 3 while a resident of State E survived by his spouse, Taxpayer B. Taxpayer A had named Trust W as the beneficiary of his Roth IRA X. As of the date of this ruling request, Roth IRA X had a value of approximately Value 1.

Trust W is a joint revocable trust created by Taxpayers A and B as joint Settlers and Trustees on Date 1, Year 1. Your authorized representative asserts that Trust W is valid under the laws of State E. Item C, paragraph 1, of Trust W provides that upon the death of the first Settlor to die, and after payment of debts and funeral expenses, the surviving Settlor/Trustee is to divide Trust W into two separate and continuing trusts, Subtrust A and Subtrust B. Item C, paragraph 1, grants Taxpayer B the authority to select the assets with which to fund each subtrust. Item C, paragraph 2, of Trust W provides that Subtrust A is to be funded with the first \$_____ of assets, and Subtrust B is to be funded with the next \$_____ of trust assets. Any assets in excess of \$_____ are to be allocated to Subtrust A. Item G of Trust W provides, in relevant part, that Subtrust B became irrevocable at the death of Taxpayer A.

Item C, paragraph 3, of Trust W provides that Subtrust A shall be considered the sole and separate property of Taxpayer B and shall be administered as she directs. Taxpayer B is the sole trustee of Subtrust A who retains the right to revoke Subtrust A.

Item F of Trust W designated Taxpayer B and her son, Taxpayer C, as the co-trustees of Subtrust B. Pursuant to Item C, paragraph 4(a), of Trust W, Taxpayer B is entitled to receive all of the income from Subtrust B. Item C, paragraph 4(b), of Trust W, provides that Taxpayer B is entitled to receive principal from Subtrust B only in cases of dire need after taking into account the assets in Subtrust A and all other sources of income or assets. Item C, paragraph 4(c), of Trust W provides that, upon the death of Taxpayer B, the assets remaining in Subtrust B are to be distributed to the issue of the Settlers.

As surviving Settlor and Trustee of Trust W, Taxpayer B is authorized to allocate Roth IRA X to Subtrust A. Taxpayer B intends to do so. Once so allocated, Taxpayer B will distribute outright and free of trust said Roth IRA X to herself as beneficiary of Subtrust A. Within 60 days of the date Roth IRA X is paid to Taxpayer B as trustee of Trust W for the purpose of being allocated to Subtrust A and paid to Taxpayer B, Taxpayer B will roll over said Roth IRA X proceeds into another Roth IRA set up and maintained in her, Taxpayer B's, name.

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

1. That Roth IRA X is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i) with respect to Taxpayer B;
2. that Taxpayer B will be treated as the payee or distributee of Roth IRA X and, as such, is eligible to roll over the proceeds of Roth IRA X set up and maintained in her, Taxpayer B's, name as long as said rollover occurs no later than the 60th day from the date said distribution is received by Taxpayer B as the trustee of Trust W; and
3. that no portion of the proceeds distributed from Roth IRA X and rolled over into another Roth IRA set up and maintained in Taxpayer B's name will be subject to the tax on excess contributions imposed by Code section 4973.

With respect to your ruling requests, Code section 408A and sections 1.408A-1 through 1.408A-9 of the Income Tax Regulations provide the rules governing Roth IRAs. Code section 408A(c)(5) provides, in relevant part, that, notwithstanding subsections (a)(6) and (b)(3) of section 408, the mandatory distribution rules of Code section 401(a)(9)(A) and the incidental death benefit requirements of section 401(a) do not apply to Roth IRAs.

Section 1.408A-1 of the Regulations, Question and Answer-1(b), provides, in relevant part, that Roth IRAs are treated as traditional IRAs except where the Internal Revenue Code specifies different treatment.

Section 1.408A-6 of the Regulations, Q&A-14(a) provides, in relevant part, that no minimum distributions are required to be made from a Roth IRA under section 408(a)(6) and (b)(3) while the Roth IRA owner is alive.

Section 1.408A-6 of the Regulations, Q&A-14(b) provides, in relevant part, that the minimum required distribution rules apply to a Roth IRA as though the Roth IRA owner died before his or her required beginning date.

In short, the mandatory distribution rules do not apply before the death of the Roth IRA holder.

Section 1.408A-6 of the Regulations, Q&A-14(b) further provides, in relevant part, that if the sole beneficiary of a decedent's Roth IRA is the decedent's spouse, such spouse may delay distributions until the decedent would have attained age 70 ½ or may treat the Roth IRA as his or her own.

Section 1.408A-8 of the Regulations, Q&A-1(b)(10) provides that the phrase "treat an IRA as his or her own" means to treat an IRA for which a surviving spouse is the sole beneficiary as his or her IRA after the death of the IRA owner in accordance with the terms of the IRA instrument or in the manner provided in the regulations under section 408(a)(6) or (b)(3).

Section 1.408A-2 of the Regulations, Q&A-4, provides, in relevant part, that the effect of a surviving spouse of a Roth IRA owner treating a Roth IRA as his/her own as of a date is that the Roth IRA is treated from that date forward as though it were established for the benefit of the surviving spouse and not the Roth IRA owner. Thus, for example, the surviving spouse is treated as the Roth IRA owner for purposes of applying the minimum distribution rules of Code sections 408(a)(6) and 408(b)(3).

In short, the above sections of the Code and regulations provide that an eligible surviving spouse may elect to treat the Roth IRA of a decedent as his/her own. Pursuant to section 1.408A-8 of the Regulations, Q&A-1(b)(10), it is necessary to look to Code section 408 and the regulations thereunder for guidance as to who is an eligible surviving spouse.

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 either treat those IRA proceeds as her own or roll them over into her own IRA.

Code section 408(d)(3)(E) provides, in short, that the rollover treatment authorized by Code section 408(d)(3) does not apply to distributions required under Code section 408(a)(6). As noted previously, no minimum required distributions are required to be made from a Roth IRA under section 408(a)(6) and (b)(3) while the Roth IRA owner is alive.

"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.

Section 1.408-8 of the "Final Regulations", Q&A-5(a), 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 the surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of Code section 401(a)(9)(A) rather than the requirements of section 401(a)(9)(B).

Section 1.408-8 of the "Final Regulations", Q&A-5(a), further provides, in relevant part, that a surviving spouse may make an election to treat an IRA of a deceased individual as his or her own only if he or she (the surviving spouse) is the sole beneficiary of the IRA and has an unlimited right to withdraw amounts from the IRA. Such election is permitted to be made at any time after the IRA holder's date of death. A surviving spouse may not treat an IRA as his or her own if a trust is the beneficiary of the IRA, even if the surviving spouse is a (or sole) beneficiary of the trust.

Section 1.408-8 of the "Final Regulations", Q&A-5(a), also provides, in relevant part, that if a surviving spouse makes an election to treat an IRA of a deceased individual as his or her own in the calendar year containing the IRA owner's death, the surviving spouse is required to take a minimum required distribution for that year determined with respect to the deceased IRA owner to the extent such a distribution was not made to the IRA owner before death. In effect, a surviving spouse may not elect to convert the amount of a minimum required distribution for the year of an IRA owner's death to his/her own IRA.

Section 1.408-8 of the "Final Regulations", Q&A-5(b) provides, in pertinent part, that an election will be considered to have been made if either of the following occurs: (1) any required amounts in the account have not been distributed within the appropriate time period applicable to the beneficiary of the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A).

Section 1.408-8 of the "Final Regulations", Q&A-5(c) concludes that the result of such an election described in paragraph (b) is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Pursuant to the above sections of the Code and "Final" Regulations, a surviving spouse may not treat a traditional IRA as her own if the IRA assets initially pass through a trust. In this case, Roth IRA X passes through Trust W before being paid to Taxpayer B. Thus, Taxpayer B may not elect to treat Roth IRA X as her own Roth IRA.

Next, in accordance with section 1.408A-1 of the Regulations, Q&A-1(b), it is necessary to determine when, if ever, a surviving spouse not eligible to elect to treat a decedent's Roth IRA as her own may elect to roll over a Roth IRA into a Roth IRA set up and maintained in her name.

In this regard, Code section 408A(e), in relevant part, provides that the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, but only if such rollover contribution meets the requirements of section 408(d)(3).

The Preamble to the "Final Regulations" provides, in relevant part, that, if a surviving spouse actually receives a distribution from an IRA that was the property of a deceased individual, the surviving spouse is permitted to roll over that distribution within 60 days into an IRA in his or her name to the extent that the distribution is not a required distribution, regardless of whether the surviving spouse is the sole direct beneficiary of the IRA owner. As noted above, no distributions from a Roth IRA are required during the life of the Roth IRA owner.

With respect to traditional IRAs, the general rule is that, if the proceeds of a decedent's IRA are payable either to a decedent's trust or to his/her estate, are paid to either the trust's trustee or the executor(trix) or personal representative of the estate who then pays them to the decedent's surviving spouse either as trust beneficiary or as testate or intestate beneficiary of the estate, said surviving spouse shall be treated as having received the IRA proceeds from either the trust or the estate and not from the decedent. Thus, pursuant to the general rule, such surviving spouse will not be treated as the payee or distributee of the IRA as that term is used in Code section 408(d)(1). Accordingly, such surviving spouse, generally, shall not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA. In accordance with section 1.408A-1 of the Regulations, Q&A-1(b), we will apply the same general rule, and its exceptions (below), to distributions from a Roth IRA.

The above described general rule may not apply under several sets of circumstances. One set of circumstances in which the general rule does not apply is the case where an IRA is payable to a trust where the surviving spouse is the sole trustee of the trust with sole authority to allocate trust assets and who allocates an IRA, including a Roth IRA, to herself.

In this case, Taxpayer B, the surviving spouse of Taxpayer A, who owned Roth IRA X at his death, is the sole trustee of Trust W, the named beneficiary of Roth IRA X. As sole Trust W trustee, Taxpayer B will allocate Roth IRA X to Subtrust A created under the terms of Trust W. Once allocated to Subtrust A, Taxpayer B, as beneficiary thereof, will request that Roth IRA X be paid or distributed to her pursuant to the language of Trust W which provides that Taxpayer B may administer Subtrust A as she directs. After receiving Roth IRA X, Taxpayer B will contribute said Roth IRA X to another Roth IRA set up and maintained in her name.

Since every action to be taken with respect to Roth IRA X from it's being distributed to the trustee of Trust W to it's being rolled over into another Roth IRA will be taken by Taxpayer B, the Service will not apply the general rule, set forth above. Thus, with respect to your first two ruling requests, the Service concludes as follows:

1. that Roth IRA X is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i) with respect to Taxpayer B; and
2. that Taxpayer B will be treated as the payee or distributee of Roth IRA X and, as such, is eligible to roll over the proceeds of Roth IRA X set up and maintained in her, Taxpayer B's, name as long as said rollover occurs no later than the 60th day from the date said distribution is received by Taxpayer B as the trustee of Trust W

With respect to your third ruling request, Code section 4973(a) imposes a 6 percent excise tax on the amount of excess contributions to (1) an IRA within the meaning of Code section 408(a), (2) an Archer MSA within the meaning of Code section 220(d), (3) an individual retirement annuity within the meaning of section 408(b), or a custodial account described in Code section 403(b)(7)(A), (4) a Coverdell account as described in Code section 530, or (5) a health savings account within the meaning of Code section 223(d). Code section 4973(a) does not reference Roth IRAs described in Code section 408A.

However, Code section 4973(f) defines "excess contributions" as said term relates to Roth IRAs. In relevant part, Code section 4973(f)(1) provides that an "excess contribution" to a Roth IRA does not include a qualified rollover contribution described in Code section 408A(e).

As noted above, Code section 408A(e), in relevant part, defines the term "qualified rollover contribution".

In response to your first and second ruling requests, we have concluded that you, Taxpayer B, may accomplish a rollover of Roth IRA X into a Roth IRA set up and maintained in your name. Such a rollover will comply with the requirements of Code section 408(d)(3).

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

3. that no portion of the proceeds distributed from Roth IRA X and timely rolled over into another Roth IRA set up and maintained in Taxpayer

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B's name will be subject to the tax on excess contributions imposed by Code section 4973.

This letter ruling is based on the assumption that Roth IRA X either has met, meets, or will meet the requirements of Code section 408A at all times relevant thereto. It also assumes that the Roth IRA into which Roth IRA X will be rolled over will also meet the requirements of Code section 408A at all times relevant thereto.

This letter ruling is based on the facts and representations contained herein.

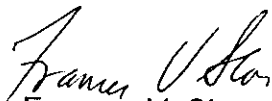
This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

The Service's point of contact with respect to this letter ruling is

1. () who may be reached at (phone) or (FAX).

Sincerely yours,



Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose