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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

UIL: 408.03-00

JUL - 8 2004

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Son S:

IRA X:

IRA Y

Broker B:

This is in response to the December 23, 2003, letter, submitted by your authorized representatives on your behalf, in which you request a series of letter rulings under section 401(a)(9) and 408(d)(3) of the Internal Revenue Code. Your letter of December 23, 2003, was supplemented by a letter of June 30, 2004. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was June died on April . Taxpayer A was survived by his wife, Taxpayer B .At the time of his death, Taxpayer A maintained IRA X and IRA Y, individual retirement arrangements with Broker B. Taxpayer A had reached the required beginning date for distributions from IRAs. Prior to his death Taxpayer A was receiving the distributions required under Code section 401(a)(9) from IRA X and IRA Y. Since then, the custodian has continued to make the required distributions

Article V, section 5.5 of the Broker B Individual Retirement Account Plan Agreement provides that if no beneficiary is named, the term "Beneficiary" shall mean the decedent's estate. Taxpayer A died without naming a beneficiary of either his IRA X or his IRA Y. Taxpayer A's will provides that Taxpayer B is the sole executor of his estate. Taxpayer A's will was admitted to

probate on June [redacted] and Letters Testamentary were issued to Taxpayer B. Article Sixth, E, of Taxpayer A's will authorizes the executor to make distributions in cash or in kind or partly in each and to allocate assets to any share different from the assets allocated to any other share as the executor determines to be for the best interest of the beneficiaries.

Article First of Taxpayer A's will provides Son S a bequest of shares of stock in two corporations. The bequest is not to exceed a specified dollar amount. The balance of the stock in those two corporations is bequeathed to Taxpayer B. Article Third of the will leaves the residue of the estate to Taxpayer B.

Form 706 (United States Estate Tax Return) for Taxpayer A's estate shows the value of the gross estate at the date of death as [redacted]. Schedule I of Form 706 shows the value of IRA X as \$ [redacted] and the value of IRA Y as [redacted]. Schedule M of Form 706 (Bequests, Etc., to Surviving Spouse) shows the amount of the bequests as \$ [redacted] including IRA X and IRA Y.

The IRA X and IRA Y accounts have not been rolled over into other IRAs since Taxpayer A's death.

Taxpayer B, as executor of the estate of Taxpayer A will cause the IRA X and IRA Y proceeds to be distributed to the estate; whereupon, she will allocate the proceeds of IRAs X and Y to her share of the estate. In accordance with her right as residuary beneficiary under the will, Taxpayer B will request distribution of the IRA X and IRA Y proceeds. Pursuant to said request, she will, in her capacity as residuary beneficiary, roll over the IRA proceeds to an IRA in her own name.

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

1. Taxpayer B may roll over IRA X and IRA Y used to satisfy the bequest to her under Article Third of the will of Taxpayer A into an IRA set up and maintained in her name and the rollover will not result in income to either the estate or Taxpayer B in the year of the rollover under section 408(d)(1) of the Code. After the rollover, Taxpayer B's IRA will be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B).
2. IRA X and IRA Y used to satisfy the bequest to Taxpayer B under Article Third of the will of Taxpayer A are not inherited IRAs as to Taxpayer B within the meaning of section 408(d)(3)(C)(i) of the Code..

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(a)(6) provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

On April 17, 2002, "Final" Income Tax Regulations were published in the Federal Register with respect to Code § 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). § 1.408-8 of the "Final" 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. If such an election is made, the spouses interest in the account is subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). 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 "Final" 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 of the estate and also the sole beneficiary of the estate.

The Preamble to the "Final 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. If the surviving spouse rolls over the distribution to an IRA in his/her name, the IRA is subject to the distribution requirements of section 401(a)(9)(A) of the Code, rather than section 401(a)(9)(B).

Section 408(d)(3)(E) of the Code provides that rollover treatment does not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

In this case, the IRA X and IRA Y account balances are payable to Taxpayer A's estate pursuant to the terms of the IRA agreement. Taxpayer B, as executor of the estate, will cause the

IRA X and IRA Y proceeds to be distributed to the estate; whereupon, she will allocate the proceeds to her share of the estate. In accordance with her right under the will, Taxpayer B will request distribution of the IRA X and IRA Y proceeds be made to her as residuary beneficiary under Taxpayer A's will. Pursuant to said request, she will, in her capacity as residuary beneficiary under Taxpayer A's will, roll over the IRA proceeds to an IRA in her own name. Said rollover will occur within 60 days of the date the IRA amounts are distributed from IRA X.

Under the facts stated above, Taxpayer B is to be treated as the payee and beneficiary of IRA X and IRA Y for purposes of Code sections 408(d)(1) and 408(d)(3) and as the IRA owner of her new IRA for purposes of section 401(a)(9). Thus, with respect to your ruling requests, we conclude as follows:

1. Taxpayer B may roll over IRA X and IRA Y used to satisfy the bequest to her under Article Third of the will of Taxpayer A into an IRA set up and maintained in her name and the rollover will not result in income to either the estate or Taxpayer B in the year of the rollover under section 408(d)(1) of the Code. After the rollover, Taxpayer B's IRA will be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B).
2. IRA X and IRA Y used to satisfy the bequest to Taxpayer B under Article Third of the will of Taxpayer A are not inherited IRAs as to Taxpayer B within the meaning of section 408(d)(3)(C)(i) of the Code..

This ruling letter assumes that IRA X and IRA Y are qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by Taxpayer B will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Taxpayer B's rollover of the IRA X and IRA Y distributions will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

Pursuant to Code section 408(d)(3)(E), this letter ruling does not authorize the rollover of any distribution from either IRA X or IRA Y required under Code section 401(a)(9).

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

The author of this ruling is

SE:T:EP:RA:T3 who may be reached at

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437