internal Revenue Service

Department of the Treasurv
Washington, DC 20224 200110033

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408.03-00
72.20-02

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T3

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LEGEND:

Taxpayer A:

. Taxpayer B:

IRA x:

IRA Y:

Date 1:

Date 2:

Date 3:

Sum 1:

Dear

This is in response to the , letter submitted on your behalf by your authorized representative in which you, through your representative, request a series of letter rulings under sections 72(t), 401(a)(9) and 408 of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, died on Date 3, 1999 having attained his "required beginning date" at that term is defined in Code section 401(a)(9)(C). Taxpayer A was survived by his spouse, Taxpayer B, whose date of birth was Date 2. Taxpayer B has not attained her Code section 401(a)(9)(C) "required beginning date".

At his death, Taxpayer A maintained two individual retirement arrangements (IRAs) in his name, IRAs X and Y. Your authorized representative has asserted on your behalf that IRA X and IRA Y each meet the requirements of Code section 408. Taxpayer B is the named beneficiary of IRA X and of IRA Y.

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Prior to his death, Taxpayer A was receiving Code section 401(a)(9) required distributions over his and Taxpayer B's joint life expectancy. Taxpayer A had elected to receive minimum required distributions based on the term certain method. In other words, Taxpayer A elected to not recalculate either his or Taxpayer B's life expectancy for purposes of computing his required distributions.

As of the date of this ruling request, IRAs X and Y continue to be maintained in the name of Taxpayer A. The calendar year 1999 Code section 401(a)(9) required distribution with respect to IRAs X and Y, in the amount of Sum 1, was made prior to December 31, 1999. Sum 1 was distributed from IRA X. Your authorized representative has asserted that the calendar year 2000 required distribution with respect to IRAs X and Y will be made prior to December 31, 2000.

Prior to December 31, 2000, Taxpayer B intends to receive a distribution of all amounts remaining in IRAs X and Y. She will then roll over said distribution(s), less the calendar year 2000 required distribution(s), into one or more IRAs set up and maintained in her name.

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

1. That Taxpayer B's receipt of the calendar year 1999 required distributions from IRAs X and Y, which receipt occurred subsequent to Taxpayer A's death, and her receipt, prior to December 31, 2000, of the calendar year 2000 required distributions from IRAs X and Y, do not represent actions that constitute an irrevocable election on her part to not treat IRAs X and Y as her own;

2. that Taxpayer B has retained the right to treat Taxpayer A's IRAs X and Y as her own;

3. that if Taxpayer B elects to treat IRAs X and Y as her own, she would be treated as the owner of said IRAs. As a result, distributions from said IRAs would be subject to the rules of Code section 401(a)(9)(A) and not the requirements of Code section 401(a)(9)(B);

4. that, pursuant to Code section 72(t)(2)(A)(ii), the required distributions received by Taxpayer B from IRAs X and Y for calendar years 1999 and 2000 will not be subject to the lo-percent additional income tax imposed by Code section 72(t)(l); and

5. that, pursuant to section 1.408-8 of the Proposed Income Tax Regulations,

Taxpayer B may roll over the single sum distribution(s) she intends to receive from IRAs X and Y prior to December 31, 2000, less the amount of the Code section 401(a)(9) required distributions with respect to calendar year 2000, into one or more IRAs set up and maintained in her name.

With respect to your first, second, third and fifth ruling requests, section 408(a)(6) of the Code 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 the IRA trust is maintained.

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.

Section 401(a)(9)(C) of the Code 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 (IRA holder) attains age 70 1/2.

Code section 401(a)(9)(D) provides, in general, that a plan participant (or IRA holder) and/or his spouse may recalculate his or their life expectancy (ies) but not more frequently than annually.

In general, an election either to recalculate or to not recalculate must be made no later than the plan participant's (or IRA holder's) required beginning date. Once an election to recalculate or not to recalculate is made, said election is irrevocable.

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)(l) 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)(l) 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.

Section 1.408-S of the Proposed Income Tax Regulations, Q&A A-4, 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 a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Q&A A-4 of section 1.408-S of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse so elects.

In this case, Taxpayer B, the surviving spouse of Taxpayer A, is the sole beneficiary of Taxpayer A's IRAs X and Y. As such, as of the date of Taxpayer A's death, Taxpayer B possessed the right to treat IRAs X and Y as her own and convert said IRAs into one or more IRAs in her name. The issue presented in this case is whether Taxpayer B waived such right by receiving distributions from IRAs X and Y, as the beneficiary thereof, during calendar years 1999 and 2000.

Neither Code section 408(d)(3) nor the section of the proposed regulations, cited above, indicates that a surviving spouse must elect to treat an IRA (or IRAs) of her deceased husband as her own prior to receiving any distributions from said IRA(s) as a beneficiary. Additionally, the language of section 1.408-S of the proposed regulations, Q&A A-4, cited above, clearly indicates that a surviving spouse treats an IRA as her own by not taking a required distribution (as a beneficiary) therefrom. It does not provide that the required distribution not taken must be the initial required distribution.

Additionally, in accordance with section 1.408-8 of the proposed regulations, Q&A A-4, a surviving spouse may elect to treat the IRAs of her deceased husband as her own by rolling over distributions from the IRAs into one or more IRAs in her name as long as the rollover(s) occur within the time frame found in Code section 408(d)(3)(A).

Thus, with respect to your first, second, third and fifth ruling request, the Service concludes as follows:

1. That Taxpayer B's receipt of the calendar year 1999 required distributions from IRAs X and Y, which receipt occurred subsequent to Taxpayer A's death, and her receipt, prior to December 31, 2000, of the calendar year 2000 required distributions from IRAs X and Y, do not represent actions that constitute an irrevocable election on her part to not treat IRAs X and Y as her own;

2. that Taxpayer B has retained the right to treat Taxpayer A's IRAs X and Y as her own:

3. that if Taxpayer B elects to treat IRAs X and Y as her own, she would be treated as the owner of said IRAs. As a result, distributions from said IRAs would be subject to the rules of Code section 401(a)(9)(A) and not the requirements of Code section 401(a)(9)(B);

5. that, pursuant to section 1.408-S of the proposed income tax regulations, Taxpayer B may roll over the single sum distribution(s) she intends to receive from IRAs X and Y prior to December 31, 2000, less the amount of the Code section 401(a)(9) required distributions with respect to calendar year 2000,

into one or more IRAs set up and maintained in her name.

With respect to your fourth ruling request, Code section 72(t)(l), generally, imposes an additional lo-percent income tax on premature distributions from either retirement plans qualified under Code section 401(a) or IRAs described in either Code section 408(a) or section 408(b). Premature distributions are defined, generally, as distributions received prior to the date the recipient or payee attains age 59 ½.

Code section 72(t)(2)(A)(ii) provides that the lo-percent additional income tax imposed by Code section 72(t)(l) will not apply to distributions made to a beneficiary (or to the estate of the employee) on or after the death of the employee.

Notice 87-13, 1987-l C.B. 432, Questions and Answers 20, 21, and 22, and Notice 87-16, 1987-I C.B. 446, Q&A D8, provide additional guidance with respect to the Code section 72(t)(l) additional income tax and the exceptions to the imposition thereof. However, neither Notice addresses the specific issue raised in this ruling request.

In this case, Taxpayer B will not have attained age 59 ½ prior to the end of calendar year 2000. Additionally, she will have received distributions from IRAs X and Y as a beneficiary thereof prior to converting said IRAs to one or more IRAs in her name. The issue is whether said conversion results in the imposition of the Code section 72(t)(l) lo-percent additional income tax on distributions otherwise described in Code section 72(t)(2)(A)(ii).

The Service has carefully reviewed the law applicable to this case and has determined that nothing in the law, including the Code sections and Notices referenced above, precludes a surviving spouse's receiving distributions from an IRA (or IRAs) of a decedent as a beneficiary, as that term is used in Code section 72(t)(2)(A)(ii), and subsequent to said receipt, converting the IRAs to one or more IRAs set up and maintained in the name of the surviving spouse. Additionally, the Service has determined that such a position would be inconsistent with the answers provided with respect to your first, second, third and fifth ruling requests (above).

Thus, with respect to your fourth ruling request, the Service rules as follows:

4. that, pursuant to Code section 72(t)(2)(A)(ii), the required distributions received by Taxpayer B from IRAs X and Y for calendar years 1999 and 2000 will not be subject to the ten percent additional income tax imposed by Code section 72(t)(l).

This letter ruling assumes that IRAs X and Y, and the IRAs into which Taxpayer B will roll over portion of the distributions she will receive from IRAs X and Y during calendar year 2000 either have, or will, comply with the requirements of Code section

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408 at all times relevant thereto. Additionally, this ruling letter also assumes that the amounts distributed from IRAs X and Y during calendar year 1999 and calendar year 2000 satisfied the rules of Code section 401(a)(9) which are made applicable to IRAs pursuant to Code section 408(a)(6).

This ruling is directed solely 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.

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437