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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 21 2004

UICs: 408.01-00
408.02-00
408.06-00

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Taxpayer D:

State C:

City D:

IRA X:

IRA Y:

Date 1:

Date 2:

Date 3:

Date 4:

Month 1:

Month 2:

Year 1:

Year 2:

Year 3:

Company G:

Company H:

Company I:

Sum 1:

Sum 2:

Court J:

Dear

This is in response to the _____, letter, submitted by your authorized representative on your behalf, supplemented by correspondence dated _____ and _____, in which you request a private letter ruling under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, Year 1, died on Date 2, Year 2, a resident of City D, State C, not having attained age 70 1/2. Taxpayer A was survived by his wife, Taxpayer B.

At the time of his death, Taxpayer A was the owner of an individual retirement account, IRA X, which he maintained with Company G. In Month 1, Year 2, Company G acquired Company I and in Month 2, Year 2, Company G adopted the name Company I. Thus, IRA X is now maintained with Company I. By means of a beneficiary designation dated Date 3, Year 3, Taxpayer A named his son, Taxpayer C, and his daughter, Taxpayer D, as the equal beneficiaries of his IRA X. At Taxpayer A's death, IRA X had a value of approximately Sum 1.

Pursuant to said beneficiary designation, Taxpayer C has transferred, by means of a trustee to trustee transfer, his share in IRA X to IRA Y, an individual retirement arrangement (IRA) set up and maintained with Company H in the name of Taxpayer A (Deceased) for the benefit of Taxpayer C. Additionally, at of the date of this ruling request, Taxpayer D still maintains her share in IRA X. However, pursuant to said

beneficiary designation, Taxpayer D intends to transfer, by means of a trustee to trustee transfer, her share in IRA X to another IRA, qualified within the meaning of Code section 408(a), set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D. Taxpayer D intends to take distributions, both required and non-required, from said transferee IRA.

On Date 4, Year 2, Taxpayer B filed a "Notice of Election of Surviving Spouse" with Court J, State C, a court of competent jurisdiction. Said notice was filed pursuant to EPTL 5-1.1A of the Statutes of State C. Pursuant to said notice, Taxpayer B, as surviving spouse of Taxpayer A, is entitled to receive 1/3 of the net estate of Taxpayer A. Taxpayer B's authorized representative has asserted that, as a result of her election, Taxpayer B is entitled to receive pro rata shares of IRA X, IRA Y, and the transferee IRA to be set up in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D. With respect to each IRA, Taxpayer A's share will be approximately Sum 2.

Taxpayer B intends to receive her elective shares of IRA Y and the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) to benefit Taxpayer D and, within 60 days of receipt, either transfer them, by means of trustee to trustee transfers, or receive them as distributions and roll them over, into an IRA set up and maintained in her name.

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

1. That, with respect to Taxpayer B, the portion of the IRA transferred from IRA X standing in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D to which Taxpayer B is entitled, pursuant to her election made pursuant to the Statutes of State C, is not an inherited IRA as that term is defined in Code § 408(d)(3)(C)(ii);
2. That, with respect to Taxpayer B, the portion of IRA Y to which Taxpayer B is entitled pursuant to her election made pursuant to the Statutes of State C, is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(ii);
3. That Taxpayer B may be treated as the distributee or payee of her elected share of the IRA transferred from IRA X standing in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D for purposes of Code § 408(d)(3);
4. That Taxpayer B may be treated as the distributee or payee of her elected share of IRA Y for purposes of Code § 408(d)(3);

5. That Taxpayer B, the surviving spouse of Taxpayer A, may either transfer or roll over the distribution that she will receive from the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) to benefit Taxpayer D, into an IRA set up and maintained in her name. Furthermore, as long as the rollover is timely, the transferee IRA distribution will not be included in Taxpayer B's gross income, pursuant to Code § 408(d)(1), with respect to calendar year _____, the year in which the distribution or transfer will occur; and
6. That Taxpayer B, the surviving spouse of Taxpayer A, may either transfer or roll over the IRA Y distribution which she will receive into an IRA set up and maintained in her name. Furthermore, as long as the rollover is timely, the IRA Y distribution will not be included in Taxpayer B's gross income, pursuant to Code § 408(d)(1), with respect to calendar year _____, the year in which the distribution or transfer will occur.

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.

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). The Preamble to the "Final" Regulations indicates, in relevant part, that with respect to calendar years beginning on or after January 1, 2003, the "Final" Regulations must be used to determine required minimum distributions.

Section 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. 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.

Section 1.408-8 of the "Final" Regulations, Q&A-5(a), further provides, in relevant part, that an electing surviving spouse must first take the required distribution for the calendar year that contains the IRA holder's date of death determined with respect to the deceased IRA owner prior to making the election to treat the deceased's IRA as her own. This requirement also applies to a surviving spouse who elects to roll over an IRA of a decedent into her own IRA.

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.

With respect to your ruling requests, Taxpayer B may not elect to treat the portions of IRAs X, Y and the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) to benefit Taxpayer D to which she is entitled under the law of State C as her own. As a result, it then becomes necessary to determine if she may either transfer or roll over said portions into her own IRA.

Generally, if a decedent's qualified plan assets, including IRA assets, do not pass to the decedent's surviving spouse by means of a beneficiary designation or under the terms of the plan or IRA, said spouse will not be treated as acquiring them from the decedent. Thus, generally, said surviving spouse will not be eligible to transfer or roll over the qualified plan or IRA proceeds into her own IRA.

The issue raised in this ruling request is whether the general rule, above, applies where IRA distributions are made directly to a surviving spouse because of her election under relevant State law to take a portion of her deceased's husband's estate (an IRA) to which she was not entitled under the deceased's beneficiary designation.

In this case, Taxpayer B, by operation of State law, is entitled to receive a pro rata share of Taxpayer A's IRA X. If paid to her directly from IRA X, Taxpayer B, as sole direct beneficiary thereof, would be entitled to either transfer or roll over said share into an IRA set up and maintained in her name.

However, we note that a portion of the assets of IRA X has been transferred, by means of a trustee to trustee transfer, into IRA Y. We also note that IRA Y remains titled in the name of Taxpayer A (Deceased) and that it is payable to Taxpayer C, the beneficiary thereof. We also note that Taxpayer C was one of two equal beneficiaries of Taxpayer A's IRA X.

Furthermore, we note that a portion of the assets of IRA X will be transferred, by means of a trustee to trustee transfer, into another IRA set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D. We also note that said transferee IRA will remain titled in the name of Taxpayer A (Deceased) and that it will be payable to Taxpayer D, the beneficiary thereof. We also note that Taxpayer D was the other of two equal beneficiaries of Taxpayer A's IRA X.

In this case, we believe that the transfer of a portion of the assets of IRA X into IRA Y and the proposed transfer of a second portion into the above-described transferee IRA benefiting taxpayer D do not change the result and that Taxpayer B, as Taxpayer A's surviving spouse who has the right to elect to receive a portion of Taxpayer A's estate under the law of the state of Taxpayer A's domicile at his death, may, upon receipt, either roll over the distribution of said portion(s) from both IRA Y and the above-described transferee IRA into an IRA set up and maintained in her name or transfer said portion(s) into such an IRA.

Thus, under the facts stated above, for purposes of Code sections 408(d)(1) and 408(d)(3), Taxpayer B is to be treated as the payee and beneficiary of the above referenced portions of both IRA Y and the above-described transferee IRA that will benefit Taxpayer D.

Therefore, in response to your ruling requests, we conclude as follows:

1. That, with respect to Taxpayer B, the portion of the IRA transferred from IRA X standing in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D to which Taxpayer B is entitled pursuant to her election made pursuant to the

Statutes of State C, is not an inherited IRA as that term is defined in Code § 408(d)(3)(C)(ii);

2. That, with respect to Taxpayer B, the portion of IRA Y to which Taxpayer B is entitled pursuant to her election made pursuant to the Statutes of State C, is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(ii);
3. That Taxpayer B may be treated as the distributee or payee of her elected share of the IRA transferred from IRA X standing in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D for purposes of Code § 408(d)(3);
4. That Taxpayer B may be treated as the distributee or payee of her elected share of IRA Y for purposes of Code § 408(d)(3);
5. That Taxpayer B, the surviving spouse of Taxpayer A, may either transfer or roll over the distribution that she will receive from the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) to benefit Taxpayer D into an IRA set up and maintained in her (Taxpayer B's) name. Furthermore, as long as the rollover is timely, the transferee IRA distribution will not be included in Taxpayer B's gross income, pursuant to Code § 408(d)(1), with respect to calendar year , the year in which the distribution or transfer will occur; and
6. That Taxpayer B, the surviving spouse of Taxpayer A, may either transfer or roll over the IRA Y distribution which she will receive into an IRA set up and maintained in her (Taxpayer B's) name. Furthermore, as long as the rollover is timely, the IRA Y distribution will not be included in Taxpayer B's gross income, pursuant to Code § 408(d)(1), with respect to calendar year , the year in which the distribution or transfer will occur.

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the transferee IRA, IRA Y, set up and maintained in the name of Taxpayer A to benefit Taxpayer C, also meets the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes that the transferee IRA set up and maintained in the name of Taxpayer A (Deceased) for the benefit of Taxpayer D will also meet the requirements of Code section 408(a) at all times relevant thereto. Next, it assumes that the IRA into which Taxpayer B will either roll over or transfer her distributions from IRA Y and the transferee IRA also meets the requirements of Code section 408(a) at all times relevant thereto. Finally if

Taxpayer B rolls over the distributions she will receive from IRA Y and the transferee IRA into an IRA set up and maintained in her name, it assumes that the rollovers will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

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

If you have any questions regarding this letter ruling, you may contact
() (FAX).

Sincerely yours,



Frances V. Sloan
Manager, Employee Plans Division
Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437