



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

200615032

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JAN 18 2006

SE: T: EP: RA: T3

*Uniform Issue List: 408.01-00*

**Legend:**

Decedent A =  
Taxpayer B =  
Estate B =  
Trust C =  
Trust D =  
Individual E =  
State F =  
Date M =  
Date N =  
Date P =  
IRA X =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated October 25, 2005, concerning the proper

rollover treatment of a distribution from Decedent A's individual retirement Account (IRA X) under section 408d(3) of the Internal Revenue Code (Code). Correspondence dated December 21, 2005, and January 4, 2006, supplemented the request.

Your authorized representative has submitted the following facts and representations:

Decedent A was born on Date M, and you, Taxpayer B, were married to Decedent A at the time of his death. Decedent A died on Date N, Decedent A maintained IRA X. Decedent A named his estate, Estate B, as the beneficiary of his IRA X.

Article IV of the last will and testament of Decedent A provides that the residue of his estate, which includes IRA X, shall be devised to Trust C.

Paragraph 4.1.1 of Trust C provides, in part, that following Decedent A's death if Decedent A is survived by Taxpayer B, the trustee shall divide the Trust C assets, including all assets received by the trustees at Decedent A's death, into two parts, each part to be Administered as a separate trust to be known respectively as the "Marital Trust" and the "Family Trust."

Initially, the sole trustee of Trust C was Individual E, the daughter of Decedent A and Taxpayer B. On Date P, consistent with paragraph 7.4.2 of Trust C, Individual E appointed Taxpayer B as a co-trustee of Trust C, delegated to Taxpayer B all her powers as trustee regarding allocation of assets between the Marital Trust and the Family Trust, and resigned as trustee of the Marital Trust, leaving Taxpayer B as the sole trustee of that trust. It is represented that such delegation is valid under State F law. Taxpayer B is currently the only trustee of Trust C with the power to make allocations of assets between the Marital Trust and the Family Trust

Paragraph 5.1.1 of Trust C provides, in part, that all income from the Marital Trust shall be distributed to Taxpayer B during her lifetime. Paragraph 5.1.3 of Trust C provides that Taxpayer B has the power to withdraw all of any portion of the Marital Trust assets at any time. As sole trustee, Taxpayer B has the unfettered right under State F law to distribute the assets of the Marital Trust to herself, as beneficiary, or for her benefit without regard to the interests of any remainder beneficiary. Previously, Taxpayer B had also signed an Assignment of Interest so that, upon allocation of assets to the Marital Trust, the same could be immediately transferred to Trust D.

Taxpayer B was named one of the initial trustees of Trust D. Article 1 of Trust D provides, in relevant part, that Taxpayer B may, without the consent of any other person, transfer property to Trust D as she deems appropriate.

Article 2 of Trust D governs distributions of Trust D assets to Taxpayer B during her lifetime. Section 2.1.1 of Trust D provides, in relevant terms, that the trustee(s) of Trust D shall pay such principal and income of Trust D to Taxpayer B as she directs. Section 2.1.2 of Trust D provides that the trustee(s) of Trust D shall make such other payments to Taxpayer B as she may direct in writing to said trustee(s).

You intend, pursuant to subparagraph 5.1.3 of Trust C, to appoint all of the assets of IRA X allocated to the Marital Trust to Trust D. Pursuant to the terms of Trust D, you then intend to request payments of said transferred IRA X funds and then transfer such assets into an IRA maintained in your name. Said actions will occur no later than

Based on the above facts and representations, you, through your authorized representative, request a ruling that you will not be required to include in your gross income for federal tax purposes proceeds which are distributed from IRA X to Trust C, subsequently allocated to the Marital Trust by you as sole trustee, transferred to Trust D, then distributed to you and finally transferred into an individual retirement account maintained in your name within 60 days of the date of distribution from IRA X to Decedent A's estate in the year such assets are distributed and received by you

With respect to your ruling request, 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 ("regulations") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the 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.

Although not specifically stated in the 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(trix) of the estate and also the sole beneficiary of the estate.

The Preamble to the 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 and/or an estate.

In this case, the IRA X account balance remaining at Decedent A's death is payable to Decedent A's estate. Pursuant to the terms of his last will, the residue of the estate, which includes IRA X, shall be devised to Trust C. You, Decedent A's surviving spouse, are the sole trustee of Trust C, and the sole beneficiary of the Marital Trust under Trust C. As sole trustee, you will cause the IRA X proceeds to be allocated to the Marital Trust. You will then transfer the proceeds directly from the Marital Trust to Trust D. You will subsequently demand payment of the IRA X assets from Trust D after which you will transfer the IRA X proceeds into an IRA set up and maintained in your name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X to Decedent A's estate.

Under the facts stated above, you are to be treated as the payee and beneficiary of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude that you will not be required to include in your gross income for federal tax purposes proceeds which are distributed from IRA X to

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Decedent A's estate, then transferred to Trust C, subsequently allocated to the Marital Trust by you as sole trustee, then transferred to Trust D, then paid and distributed to you, and finally transferred into an individual retirement account maintained in your name within 60 days of the distribution from IRA X in the year such assets are distributed and received by you

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 rollover IRA to be set up by you will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that your rollover of the IRA X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

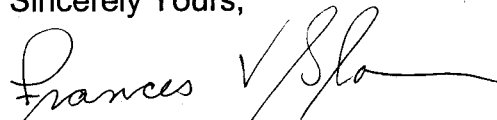
This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent

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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call \*\*\*\*\* (ID \*\*-\*\*\*\*) at (\*\*\*) \*\*\*-\*\*\*\* (not a toll free number).

Sincerely Yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose  
Deleted Copy of Ruling

CC: