



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 14 2005

UICs: 408.00-00
408.03-00
671.02-00
678.01-00

LEGEND:

T:EP:BA

Decedent:

Taxpayer B:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Trust T:

State U:

Dear [REDACTED] :

This is in response to the [REDACTED] letter submitted by your authorized representative on your behalf, as supplemented by correspondence dated [REDACTED] and [REDACTED], in which he, on your behalf, request a series of letter rulings under sections 671, 678 and 408 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent, whose date of birth was Date 1, 1931, died on Date 2, 2003, survived by his spouse, Taxpayer B. Taxpayer B's date of birth was Date 5, 1936.

At the time of his death, the Decedent had attained his "required beginning date" as that term is defined in section 401(a)(9)(C) of the Code. Furthermore, at the time of his death, Decedent owned an individual retirement account (the "IRA"), from which he had begun taking required minimum distributions (MRDs). The named primary beneficiary of the IRA as of the date of the Decedent's death was Trust T.

Article XIII of Trust T provides that Trust T is governed by, and valid under, the laws of State U.

The Trust was established by Taxpayer B on Date 3, 1992. Section III.A.(1) of Trust T provides that during Taxpayer B's life, she shall have the right to revoke Trust T entirely and to reclaim from the trustee all of the trust property remaining after making payment or provision for payment of all expenses connected with the administration of Trust T. Section III.A.(4) provides that during Taxpayer B's life, she shall have the right from time to time to withdraw from Trust T any part or all of the Trust property.

Other than the MRD for the year of the Decedent's death, the custodian had not distributed any portion of the IRA to Trust T or any other person.

On or about Date 4, 2004, Taxpayer B transferred, by means of a trustee to trustee transfer, the amounts remaining in Decedent's IRA into an IRA set up and maintained in her name.

Based on the above facts and representations, Taxpayer B, through her authorized representative, requests rulings that:

1. Trust T will be treated as wholly owned by Taxpayer B under Code section 671 and that Taxpayer B will therefore be considered as the owner of the Trust T assets for federal income tax purposes;
2. the "deemed" transfer of the Decedent's IRA to Trust T followed by the transfer of the Decedent's IRA into an IRA set up and maintained in the name of Taxpayer B will be treated as a "spousal rollover," eligible for favorable treatment under section 408; and
3. Pursuant to Code section 408(d)(3), none of the proceeds of Decedent's IRA will be includible in the gross income of Taxpayer B for Federal income tax purposes for either the calendar year in which the assets were distributed from Decedent's IRA or the calendar year in which they were transferred into (contributed to) Taxpayer B's IRA.

With respect to your first ruling request, section 671 of the Code provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 678(a)(1) of the Code provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which such person has a

power exercisable solely by himself to vest the corpus or the income therefrom in himself.

Revenue Ruling 85-13, 1985-1 C.B. 184, concludes that if a grantor is treated as the owner of a trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes.

Therefore, based solely on the facts and representations submitted, we conclude with respect to your first ruling request that Trust T is a grantor trust treated as wholly owned by Taxpayer B under Code sections 671 and 678. Therefore, Taxpayer B will be treated as the owner of Trust T assets for federal income tax purposes.

With respect to your additional 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(d)(3)(E) provides that the rollover rules of Code section 408(d) do not apply to any amount required to be distributed pursuant to Code section 408(a)(6).

With respect to your ruling requests, "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.

The Preamble to the "Final" Income Tax Regulations under section 401(a)(9) of the Code also provides, in relevant part, that a surviving spouse may elect to treat an IRA of his/her deceased spouse as his/her own if the surviving spouse is the sole beneficiary of the IRA with an unlimited right to withdraw from the IRA. A surviving spouse may not elect to treat an IRA as his/her own if a trust is the beneficiary of the IRA even if she is the sole beneficiary of the trust. (See Preamble at 67 Federal Register 18992-18993).

However, under certain circumstances, a surviving spouse may be eligible to roll over a distribution from an IRA of a decedent if the spouse actually receives the distribution regardless of whether the spouse is the sole beneficiary of the IRA.

With respect to your second and third ruling requests, generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as beneficiary of the trust, said surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, generally, shall not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA. There are exceptions to this general rule.

In this case we note that Trust T was the named beneficiary of Decedent's IRA. Taxpayer B was the grantor of Trust T and, in response to your initial ruling request, the Service has concluded that Taxpayer B is to be treated as the owner of Trust T pursuant to Code sections 671 and 678. Furthermore, Taxpayer B retains the lifetime power to revoke Trust T, and has the power to reclaim Trust T property.

Under the circumstances presented in this ruling request, the Service will not apply the general rule, but will, instead, treat amounts distributed from Decedent's IRA and eventually placed in an IRA set up and maintained in the name of Taxpayer B as being received by her IRA directly from the decedent's IRA and not from Trust T. Furthermore, as noted above, Taxpayer B was Taxpayer A's surviving spouse.

Therefore, with respect to your second and third ruling requests, we conclude as follows:

2. The "deemed" transfer of the Decedent's IRA to Trust T followed by the transfer of the Decedent's IRA into an IRA set up and maintained in the name of Taxpayer B will be treated as a "spousal rollover" eligible for favorable treatment under section 408; and

3. Pursuant to Code section 408(d)(3), none of the proceeds of Decedent's IRA will be includible in the gross income of Taxpayer B for Federal income tax purposes for either the calendar year in which the assets were distributed from Decedent's IRA or the calendar year in which they were transferred into (contributed to) Taxpayer B's IRA (if different).

Please note that our ruling letter does not authorize the rollover of any amounts required to be distributed under Code sections 401(a)(9) and 408(a)(6).

This letter ruling is based on the assumption that Decedent's IRA and Taxpayer B's transferee IRA, referenced herein, either met or meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Trust T is valid under the laws of State U.

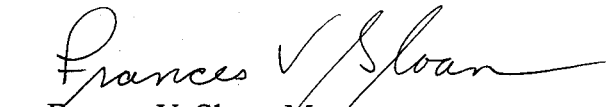
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter 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 as precedent.

Pursuant to the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

If you wish to inquire about this ruling, please contact [REDACTED]
[REDACTED] at [REDACTED] (phone) or [REDACTED] (FAX).

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

Copy of Notification Letter (Form 1155) to Authorized Representative