



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 09 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. T3

Legend:

- Taxpayer A =
- Taxpayer B =
- Trust T =
- Financial Advisor C =

- State E =
- Amount F =
- Amount G =
- Amount H =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

200605019

| | |
|-----------------|---|
| Date 7 | = |
| Date 8 | = |
| Institution #1 | = |
| Institution # 2 | = |
| Institution #3 | = |
| IRA #1 | = |
| IRA #2 | = |
| IRA #3 | = |
| IRA #4 | = |
| Non-IRA #1 | = |
| Amount #1 | = |
| Amount #2 | = |
| Amount #3 | = |
| Amount #4 | = |
| Amount #5 | = |
| Amount #6 | = |
| Amount #7 | = |
| Amount #8 | = |
| Amount #9 | = |

Dear [REDACTED]:

This letter is in response to a ruling request dated [REDACTED], and supplemented by correspondence dated [REDACTED], and [REDACTED], submitted by your authorized representative, in which you request a letter ruling that a proposed rollover (or rollovers) of a distribution (or distributions) from IRA annuities by you as the surviving spouse will comply with the requirements of section 408(d) of the Internal Revenue Code ("Code"). You also ask for a waiver of the 60-day rollover requirement contained in section 408(d)(3)(A)(i) of the Code, and you request rulings that deposits and transfers of certain amounts do not constitute excess contributions to an IRA under Code section 4973.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is the surviving spouse of Taxpayer B. Taxpayer B, whose date of birth was Date 1, 1930, died on Date 2, 2002, at the age of 72. Taxpayer A's date of birth is Date 3, 1932. Taxpayer B owned three individual retirement annuities, IRA #1 maintained with Institution #1, IRA #2 maintained with Institution #2, and IRA #3 maintained with Institution #3 ("the IRAs"). The minimum required distribution to Taxpayer B for the calendar year ending 2002, pursuant to Code sections 408(a)(6) and 408(b)(3), was Amount F. Amount G was distributed from the IRAs to Taxpayer B in 2002 prior to his death. As of the end of calendar year 2002, Amount H (Amount F less Amount G) represented the remaining minimum distribution required to be made to Taxpayer B for calendar year 2002.

On Date 4, 2000, Taxpayer B executed Trust T. Trust T, which your authorized representative has certified is a valid trust under the laws of State E, is the named beneficiary of the IRAs. Your authorized representative has asserted that Trust T, at Article V(a), provides that upon the death of Taxpayer B, the residue will be transferred and paid over to Taxpayer A outright and free of trust. Article III of Trust T also provides that, after the death of Taxpayer B, Taxpayer A becomes the sole Trustee of Trust T, with the power, authority and obligation to distribute all of the principal and income of Trust T to herself (as an individual). Article XVI(g) of Trust T, expressly authorizes Taxpayer A to make direct trustee-to-trustee transfers, direct rollovers and similar types of transfers with respect to any IRA owned by Taxpayer B at his death.

Your authorized representative has asserted that Taxpayer A and Taxpayer B had a long-term relationship with Financial Advisor C, who managed the IRAs

and other accounts for Taxpayer A and Taxpayer B. Taxpayer A relied on Financial Advisor C to provide sound financial advice, and followed said advice without question until Taxpayer A's attorney and family members concluded that the advice given was incorrect, especially with regard to the tax effect of certain transactions involving the IRA #1, IRA #2, and IRA #3 annuities. Your authorized representative has asserted that the transactions were, and arguably remain, of absolutely no benefit to Taxpayer A, but that Taxpayer A trusted Financial Advisor C and followed his instructions to her detriment.

Your authorized representative asserted that in a series of transactions regarding IRA #1 maintained by Taxpayer B with Institution #1, Taxpayer A signed a beneficiary claim form that, your authorized representative asserts, may have resulted in an unnecessary acceleration of the income taxes payable with respect to IRA #1. Specifically, on or about Date 5, 2002, Institution #1 transferred IRA #1 proceeds to an Institution #1 non-IRA regular money market account (Non-IRA #1 account). Financial Advisor C did not explain to her that the transfer was from an IRA, did not explain other available options to her, did not explain the effect of the transfer, and did not explain the rollover rules and deadlines. The transfer was in the amount of Amount 1.

The proceeds of IRA #2, totaling Amount 2, were received by Financial Advisor C acting on behalf of Taxpayer A on or about Date 6, 2002. The proceeds of IRA #3, totaling Amount 3, were received by Financial Advisor C no later than Date 7, 2002. With regard to IRA #2, and IRA #3, when Taxpayer A's attorney and family members became aware of the transfer of the proceeds of IRA #1 into Non-IRA #1, they advised Taxpayer A to deposit the proceeds of both IRA #2 and IRA #3 into IRA #4, an IRA set up in Taxpayer A's name and under Taxpayer A's Social Security number. The proceeds of both IRA #2 and IRA #3, Amounts 2 and 3, respectively, were deposited into IRA #4 on or about Date 8, 2003, which was after the 60-day rollover period applicable to the distributions from IRA #s 2 and 3 had expired, because, as asserted by your authorized representative, Taxpayer A was still grieving over her spouse's unexpected death, and was relying on the incomplete and inadequate advice of Financial Advisor C.

With respect to IRA #4, your authorized representative has asserted to the Service that a distribution intended to comply with the requirements of Code sections 401(a)(9) and 408(a)(6) was made with respect to calendar year 2004 by December 31, 2004.

Your authorized representative has presented documentation to the Service which indicates that each account represented to be an IRA account is, in fact,

an IRA. Furthermore, your authorized representative has asserted that Taxpayer A did not execute a "Qualified Disclaimer" with respect to either IRA #1, IRA #2, or IRA #3. As a result, the entire Trust estate (including the IRAs) was properly transferred and paid over to Taxpayer A, outright and free of trust.

Your authorized representative has asserted that no distributions or withdrawals have been made from Non-IRA Account #1. Additionally, IRA #4 which holds the assets distributed from IRA #2 and IRA #3, remain intact.

Your authorized representative proposes to transfer a "Rollover Amount" from the Non-IRA Account #1 to IRA #4. The "Rollover Amount" will be equal to the value of the Non-IRA Account #1 as of the date of transfer less the amount allocable to the remaining calendar year 2002 required distribution (Amount H). In addition, the "Rollover Amount" will not include either the required distribution for calendar year 2003, the required distribution for calendar year 2004, or the required distribution for calendar year 2005.

The required distribution for calendar year 2003 will be computed by dividing Amount #4, the December 31, 2002 value of Non-IRA Account #1 less Amount H, by Taxpayer A's life expectancy computed using the Single Life Table found at section 1.401(a)(9)-9 of the "Final" Income Tax Regulations which required amount is approximately Amount #7.

The required distribution for calendar year 2004 will be computed by dividing Amount #5, the December 31, 2003 value of Non-IRA Account #1 less Amount H and less Amount #7, by Taxpayer A's life expectancy computed using the Single Life Table found at section 1.401(a)(9)-9 of the "Final" Income Tax Regulations which required amount is approximately Amount #8.

The required distribution for calendar year 2005 will be computed by dividing Amount #6, the December 31, 2004 value of Non-IRA Account #1 less Amount H, less Amount 7, and less Amount #8, by Taxpayer A's life expectancy computed using the Single Life Table found at section 1.401(a)(9)-9 of the "Final" Income Tax Regulations which required amount is approximately Amount #9.

Based on the above facts and representations, you request that the Internal Revenue Service issue the following rulings:

1. That IRA #1, IRA #2, and IRA #3 (the IRAs) are not inherited IRAs as that term is defined in Code section 408(d)(3)(C)(i) with respect to Taxpayer A;

2. That Taxpayer A may be treated as a distributee or payee of IRA #1, IRA #2, and IRA #3, under Code section 408(d), and is eligible to roll over the assets distributed from those IRAs to an IRA maintained in her own name;
3. That the deposit of the Institution #2 check and the Institution #3 check into IRA #4 will be treated as rollover contributions within the meaning of Code section 408(d)(3) pursuant to Code section 408(d)(3)(I);
4. That the transfer of "Rollover Amount" from the Non-IRA Account #1 to IRA #4 within 60 days of the date of this ruling letter will constitute a rollover contribution within the meaning of Code section 408(d)(3) by virtue of a waiver of the 60-day rollover requirement by the Secretary pursuant to Code section 408(d)(3)(I);
5. That pursuant to this request, the Taxpayer will not be required to include in gross income for federal income tax purposes for the 2002 tax year the amounts distributed from IRA #1, IRA #2, and IRA #3 to the extent rolled over into IRA #4 pursuant to this letter ruling;
6. That the deposits of the Institution #2 check and the Institution #3 check to IRA #4 do not constitute excess contributions within the meaning of Code section 4973; and
7. That the transfer of the "Rollover Amount" to IRA #4 will not constitute an excess contribution within the meaning of Code section 4973.

With respect to your ruling requests, Code section 408(a) provides the general requirements applicable to IRAs. Code section 408(a)(6), in summary, provides that the "minimum required distribution" rules of Code section 401(a)(9) apply to IRAs.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if –

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term "eligible retirement plan" means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of this paragraph.

Section 408(d)(3)(C) of the Code provides, in general, that the IRA rollover rules do not apply to inherited accounts. The term "inherited account" does not apply to an IRA that is acquired by the surviving spouse of an IRA owner by reason of the death of the IRA owner.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Section 1.408-8 of the Final Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6), Question and Answer-5(a), (See 67 Federal Register 18988, 19025 (April 17, 2002)), provides in relevant part, that the surviving spouse of an individual may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA (or the remaining part of such interest if distribution has commenced to the spouse) as the spouse's own IRA. This election is permitted to be made at any time after the individual's date of death. If the surviving spouse makes such an election, the required minimum distribution

for the calendar year of the election and each subsequent calendar year is determined under Code section 401(a)(9)(A) with the spouse as the IRA owner and not Code section 401(a)(9)(B) with the surviving spouse as the deceased IRS owner's beneficiary.

Section 1.408-8 of the Final Regulations, Q&A-5(a), provides in relevant part, that 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(c), provides that if the surviving spouse makes such an election, the surviving spouse shall then be considered the IRA owner for whose benefit the trust is maintained for purposes under the Code.

Section 1.408-8 of the Final Regulations, Q&A-9, provides that separately calculated required minimum distributions with respect to more than one IRA may be totaled and the total distribution may be taken from any one or more of an individual's IRA accounts.

In general, a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his or her own IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if the IRA assets pass through either a trust or an estate.

Section 4973(a) of the Code imposes a 6% excise tax on the amount of an excess contribution to an IRA. Code section 4973(b) provides that the term "excess contribution" is the difference between the amount actually contributed to an IRA over the amount eligible to be contributed to said IRA in accordance with the requirements of various Code sections including Code section 408(d)(3).

With respect to your initial two 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.

For example, the general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust who pays the IRA proceeds to herself

pursuant to the terms of the trust which provide that the trust estate is to be paid to said surviving spouse outright and free of trust upon the demand of the surviving spouse, which surviving spouse then receives the IRA proceeds and rolls them into an IRA set up and maintained in her name.

In this case, Taxpayer A was the sole trustee of Trust T after the death of Taxpayer B and the sole beneficiary of Trust T. Furthermore, as noted above, after the death of Taxpayer B, Taxpayer A, as the trustee of Trust T was to pay over the Trust T estate to Taxpayer A outright and free of trust. Under this set of facts, the Service will not apply the general rule set forth above.

Thus, with respect to your first two ruling requests, the Service concludes as follows:

1. That IRA #1, IRA #2, and IRA #3 (the IRAs) are not inherited IRAs as that term is defined in Code section 408(d)(3)(C)(i) with respect to Taxpayer A;
2. That Taxpayer A may be treated as a distributee or payee of IRA #1, IRA #2, and IRA #3, under Code section 408(d), and is eligible to roll over the assets distributed from those IRAs to an IRA maintained in her own name

With specific respect to your third and fourth ruling requests, Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(l), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

In response to your first two ruling requests, the Service has concluded that IRAs #1, #2, and #3 were not inherited IRAs with respect to Taxpayer A and that the proceeds of IRA #1, #2, and #3 were eligible for rollover treatment had Taxpayer A rolled them into one or more IRAs on a timely basis. However, as noted above, she did not do so.

In this case, the Service notes that the evidence produced with respect to Taxpayer A's ruling request indicates that Taxpayer A lacked sophistication with respect to IRAs, including the tax treatment of IRA distributions and the IRA rollover rules. Furthermore, Taxpayer A relied on her investment advisor, Financial Advisor C, who essentially, advised her to deposit the IRA proceeds

into a non-IRA Account. Additionally, it was only after Taxpayer A's attorney and members of Taxpayer A's family became aware of the advice Taxpayer A had been given by Financial Advisor C, did Taxpayer A understand the ramifications of the actions she had taken with respect to the three IRAs referenced herein. Also, the proceeds of IRA #2 and IRA #3 were contributed into IRA #4 a short time after the expiration of the 60-day rollover period applicable to the distributions from IRA #2 and IRA #3. Finally, the proceeds of IRA #s 1, 2, and 3 have not been spent or otherwise disposed of. Under these circumstances, the Service concludes that a waiver of the 60-day requirement in this case is appropriate.

Therefore, pursuant to Code section 408(d)(3)(I), with respect to your third and fourth ruling requests, the Service concludes as follows:

3. That the deposit of the Institution #2 check (IRA #2) and the Institution #3 check (IRA #3), totaling Amount 2 and Amount 3 respectively, into IRA #4 will be treated as rollover contributions within the meaning of Code section 408(d)(3) pursuant to Code section 408(d)(3)(I); and

4. That the transfer of "Rollover Amount" from the Non-IRA #1 to IRA #4 within 60 days of the date of this ruling letter will constitute a rollover contribution within the meaning of Code section 408(d)(3) by virtue of a waiver of the 60-day rollover requirement pursuant to Code section 408(d)(3)(I).

With specific respect to your fifth ruling request, the Service has ruled that the distributions of the proceeds of IRA #s 1, 2, and 3 were eligible to be rolled over into one or more IRAs set up and maintained in the name of Taxpayer A, and that Code section 408(d)(3)(I) either authorized or authorizes Taxpayer A to roll over said proceeds into one or more IRAs set up and maintained in the name of Taxpayer A even after the expiration of the 60-day rollover period applicable to said IRA Accounts. Based on the Service's previous conclusions, the actions taken with respect to IRA #s 2 and 3 or to be taken with respect to IRA #1 will result in tax deferred treatment attaching to the amounts rolled over. Thus, with respect to your fifth ruling request, we conclude as follows:

5. That Taxpayer A will not be required to include in her gross income for federal income tax purposes, for the [REDACTED] tax year the amounts distributed from IRA #1 (to the extent it does not exceed the "Rollover Amount"), IRA #2, or IRA #3.

With specific respect to your sixth and seventh ruling request, Taxpayer A's contributions of Amounts 2 and 3 into IRA #4 constituted rollover contributions within the meaning of Code section 408(d)(3). Furthermore, if Taxpayer A

200605019

contributes the "Rollover Amount" (the amount distributed from IRA #1 during calendar year 2002 less all required distributions) into one or more IRAs set up and maintained in her name, said contribution will also be treated as a rollover contribution within the meaning of Code section 408(d)(3). As a result, said contributions will not constitute "excess contributions" within the meaning of Code section 4973(b). Therefore, the 6 percent excise tax imposed by Code section 4973(a) will not apply to said contributions.

Thus, with respect to your sixth and seventh ruling requests, we conclude as follows:

6. That the deposits of the Institution #2 check and the Institution #3 check to IRA #4 did not constitute excess contributions within the meaning of Code section 4973; and

7. That the proposed rollover contribution or transfer of the "Rollover Amount" to IRA #4 will not constitute an excess contribution within the meaning of Code section 4973.

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) with respect to calendar years 2002, 2003, 2004 and 2005. Additionally, please also note that Taxpayer A attained age 70 ½ during calendar year 2003 and reached her required beginning date ("RBD"), as that term is defined in Code section 401(a)(9)(C) on April 1, 2004. In this regard, the Service notes that amounts currently in IRA #4 set up and maintained in the name of Taxpayer A (amounts formerly in IRA #s 2 and 3) have been and are currently subject to the applicable mandatory distribution requirements of Code section 408(a)(6). Additionally, since this ruling letter concludes, in part, that the contribution to IRA #4 of amounts distributed on or about Date 5, 2002 from Taxpayer B's IRA # 1 is to be treated as a rollover contribution to said IRA #4, required distributions with respect to said rolled over IRA #1 amounts must be made in accordance with the applicable mandatory distribution requirements of Code section 408(a)(6) and must begin no later than the end of the calendar year following the calendar year in which contributed to IRA #4.

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.

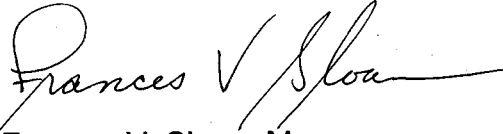
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

200605019

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
Esquire, SE:T:EP:RA:T3, I.D. # - , at (202) - .

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in black ink and is positioned above the printed name and title.

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