



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

200915063

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.00-00
408.03-00
408A.00-00

JAN 14 2009

LEGEND:

SET:EP:RA:T:3

Decedent:

Taxpayer B:

Taxpayer C:

Employee D:

Attorney E:

Amount 1:

Amount 2:

Amount 3:

Amount 4:

Trust T:

Subtrust U:

Subtrust V:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

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Date 7:

Month 1:

Month 2:

Company M:

IRA X:

IRA Y:

IRA Z:

Roth IRA X:

State W:

Case 1:

Case 2:

Dear

This is in response to the request for letter rulings under sections 408(d) and 408A of the Internal Revenue Code ("Code"), as supplemented by correspondence dated , and . The following facts and representations support your ruling request.

Decedent died on Date 2, 2007, a resident of State W. Decedent's date of birth was Date 1, 1950; thus, Decedent had not attained his "required beginning date" as that

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term is defined in section 401(a)(9)(C) of the Code. Decedent was survived by his spouse, Taxpayer B, whose date of birth was Date 5, 1950.

At the time of his death, the Decedent owned four individual retirement accounts (IRA X, IRA Y, IRA Z, and Roth IRA X), with Company M. As of the date of Decedent's death, the values of IRA X, IRA Y, IRA Z, and Roth IRA X were approximately Amount 1, Amount 2, Amount 3, and Amount 4, respectively. The named beneficiary of each IRA, including Roth IRA X, was Trust T dated Date 3, 1999. Trust T was amended on Date 4, 2001.

Article 1 of Trust T provides, in relevant part, that upon the death of Decedent, Taxpayer B became the sole trustee of Trust T.

Relevant provisions of Trust T provide, that after the death of the first of Decedent and Taxpayer B, the trust estate, with exceptions not pertinent to this ruling request, will be allocated to either Subtrust U or Subtrust V. Article 3 of Trust T, in relevant part, provides that after allocation of Trust T assets to either Subtrust U or Subtrust V, the survivor of Decedent and Taxpayer B (Taxpayer B) may revoke and amend Subtrust U.

Article 3 of Trust T, in relevant part, provides, that the Trust T trustee shall allocate to Subtrust U amounts from the deceased spouse's separate trust estate, if any, "...a general pecuniary gift equal to the minimum amount that will entirely eliminate or reduce as far as possible the federal estate tax, after allowance of all other deductions, when added to the sum of..." other assets defined therein.

Article 4 of Trust T, which refers to Subtrust U, provides, in relevant part, that "the trustee shall pay to or for the surviving spouse as much of the net income of the trust estate and also as much of the principal as the trustee deems appropriate for the surviving spouse's health, support, comfort, welfare or happiness taking into account his or her accustomed manner of living and other resources reasonable available to him or her".

Under Article 4, the surviving spouse may at any time direct the trustee in writing to pay single sums or periodic payments of the trust estate to any person or organization. The surviving spouse may at any time revoke or amend Subtrust U in whole or in part by a written document delivered to the trustee if a person other than the surviving spouse is the trustee. On the surviving spouse's death, the trustee is to distribute the remainder of the trust estate to such one or more persons and entities, including the surviving spouse's estate, as the surviving spouse shall appoint. This power is to be exercisable by the surviving spouse alone and in all events.

Article 7 of Trust T provides, in relevant part, that Trust T and its sub-trusts shall be governed under the laws of State W.

It has been represented that under the laws of State W, the above-cited language of Article 4 of Trust T gives the trustee of Trust T the power to distribute any or all of the assets held in Subtrust U to the surviving spouse, Taxpayer B, for any purpose.

It has been represented that assets held in IRAs X, Y, and Z and Roth IRA X had been allocated to Subtrust U by the Trust T trustee, Taxpayer B.

In Month 1, 2007, Employee D, an employee of Company M, who was Taxpayer B's financial advisor, advised Taxpayer B, and her son, Taxpayer C, that because Trust T had been named the beneficiary of Decedent's IRA X, IRA Y, IRA Z, and Roth IRA X, Taxpayer B was required to distribute the entire account balances of Decedent's four IRAs immediately to accounts established in the name of Trust T and that Taxpayer B had no alternatives with respect to said IRA assets. Accordingly, based on the representations of Employee D, on Date 6, 2007, all of the assets in the four IRAs were distributed and placed in a Trust T account.

Shortly after Date 6, 2007, Taxpayers B and C were advised by a family member that their Date 6, 2007 actions resulted had significant Federal tax consequences.

On or about Date 7, 2007, Taxpayer C called Employee D to determine if the information he and his mother, Taxpayer B, had received from the above-referenced family member was correct. Employee D indicated that the information was correct, that the distributions to the Trust T account resulted in substantial tax liability, but that there was nothing Company M could do to reverse the transactions. During the Date 7, 2007, phone call, Taxpayer C asked Employee D if it would be possible to return part or all of the funds distributed from IRAs X, Y, and Z and Roth IRA X to the IRAs. Employee D responded that such transactions could not be accomplished.

Date 7, 2007 was within 60 days of Date 6, 2007, the date on which the IRA distributions were made.

During Month 2, 2007, Taxpayer B consulted with Attorney E regarding matters pertaining to Trust T. Attorney E advised Taxpayer B that the information provided by Employee D may not have been correct, but that the 60-day rollover period applicable to the Date 6, 2007 distributions referenced above had expired.

As of the date of this ruling request, the assets distributed from the four (4) IRAs which are the subject matter of this ruling request remain in the Trust T account referenced above.

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

1. That, although Trust T was the named beneficiary of the three (3) traditional IRAs referenced herein, with respect to Taxpayer B, neither IRA X, IRA Y, nor IRA Z, was an inherited individual retirement account (IRA);
2. That although Trust T was the named beneficiary of the Roth IRA referenced herein, with respect to Taxpayer B, Roth IRA X was not an inherited Roth individual retirement account (IRA);
3. That, since IRA X, IRA Y, and IRA Z, were not inherited IRAs with respect to Taxpayer B, Taxpayer B was eligible to roll over, or transfer, the assets held in said IRAs at the death of Decedent into one or more IRAs set up and maintained in her name;
4. That since Roth IRA X was not an inherited Roth IRA with respect to Taxpayer B, Taxpayer B was eligible to roll over, or transfer, the assets held in said Roth IRA at the death of Decedent into a Roth IRA set up and maintained in her name;
5. That, pursuant to Code section 408(d)(3)(I), Taxpayer B is granted a period, not to exceed 60 days as measured from the date of this ruling letter to contribute, by means of a rollover contribution (or contributions), the amounts distributed from IRA X, IRA Y, and IRA Z, into one or more traditional IRAs set up and maintained in her name; and
6. That, pursuant to Code section 408A(a), Code section 408A(c)(6), Code section 408A(e), and Code section 408(d)(3)(I), Taxpayer B is granted a period, not to exceed 60 days as measured from the date of this ruling letter to contribute, by means of a rollover contribution, the amounts distributed from Roth IRA X into a Roth IRA set up and maintained in her name.

With respect to your ruling requests, 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 (other than an IRA) 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 section 408(d)(3)).

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 section 408(d)(3).

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayer B is Decedent's surviving spouse.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(E) provides, in summary, that this paragraph does not apply to any amount required to be distributed in accordance with subsection (a)(6) or (b)(3) (Code section 401(a)(9) required distributions).

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.

Code section 408A(a) provides that except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

Code section 408A(c)(6)(A) provides that "no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution".

Code section 408A(e) provides, in relevant part, that for purposes of Code section 408A, the term "qualified rollover contribution" means a contribution to a Roth IRA from another such account but only if such rollover contribution meets the requirements of Code section 408(d)(3).

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)(I), 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.

The Preamble to the "Final" Income Tax Regulations under section 401(a)(9) of the Code 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. However, 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 (See Preamble at 67 Federal Register 18992-18993 (April 17, 2002)).

The "Preamble" to the "Final" Regulations also provides that a surviving spouse may not elect to treat as her own the required distribution (to the extent not taken prior to death) for the calendar year of the IRA owner's death.

In this case, State W law governs in construing the provisions of Subtrust U, which define Taxpayer B's rights to the IRA accounts. Under the law of State W, Subtrust U grants to Taxpayer B the unfettered right to withdraw the IRA accounts from Subtrust U. Case 1, Case 2.

With respect to your ruling requests, generally, if either a decedent's qualified plan assets or a decedent's IRA assets (including Roth IRA assets) pass through a third party, e.g. an estate or a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the qualified plan proceeds into her own IRA.

However, in certain situations the Service does not apply the general rule. With respect to the rule's application in this case, the language of Trust T and Subtrust U gives

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Taxpayer B the power to pay any or all part of the Subtrust U assets to herself as beneficiary of Subtrust U. Thus, Taxpayer B had the absolute right to receive the four (4) IRAs referenced herein and total control over the disposition of said IRAs. As a result, the disposition of said IRAs lay outside the control of anyone other than Taxpayer B.

As a result of its specific facts of this case, the Service will not apply the general rule (above) in this case. Therefore, with respect to your first four ruling requests, we conclude as follows:

1. That, although Trust T was the named beneficiary of the three (3) traditional IRAs referenced herein, with respect to Taxpayer B, neither IRA X, IRA Y, nor IRA Z, was an inherited individual retirement account (IRA);
2. That although Trust T was the named beneficiary of the Roth IRA referenced herein, with respect to Taxpayer B, Roth IRA X was not an inherited Roth individual retirement account (IRA);
3. That, since IRA X, IRA Y, and IRA Z, were not inherited IRAs with respect to Taxpayer B, Taxpayer B was eligible to roll over, or transfer, the assets held in said IRAs at the death of Decedent into one or more IRAs set up and maintained in her name;
4. That since Roth IRA X was not an inherited Roth IRA with respect to Taxpayer B, Taxpayer B was eligible to roll over, or transfer, the assets held in said Roth IRA at the death of Decedent into a Roth IRA set up and maintained in her name.

With respect to your fifth and sixth ruling requests, we note that Taxpayer B's failure to complete timely rollovers of the Amounts distributed from the four (4) IRAs referenced herein was due to her reliance on the advice of Company M's Employee D which advice did not inform her correctly as to either her rights with respect to said IRA amounts or as to the tax consequences of her withdrawing the Amounts from said IRA and transferring said amounts into an account set up and maintained in the name of Trust T.

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

5. That, pursuant to Code section 408(d)(3)(I), Taxpayer B is granted a period, not to exceed 60 days as measured from the date of this ruling letter to contribute, by means of a rollover contribution (or contributions), the amounts distributed from IRA X, IRA Y, and IRA Z, into one or more IRAs set up and maintained in her name; and

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6. That, pursuant to Code section 408A(a), Code section 408A(c)(6), Code section 408A(e), and Code section 408(d)(3)(I), Taxpayer B is granted a period, not to exceed 60 days as measured from the date of this ruling letter to contribute, by means of a rollover contribution, the amounts distributed from Roth IRA X, into a Roth IRA set up and maintained in her name.

This ruling letter is based on the assumption that IRA X, IRA Y and IRA Z met the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Roth IRA X met the requirements of Code section 408A at all times relevant thereto. Furthermore, it assumes that the IRA (or IRAs), and the Roth IRA into which Taxpayer B will contribute the amounts (or portions thereof) will also meet the requirements of either Code section 408(a) or Code section 408A at all times relevant thereto. It also assumes that Trust T is valid under the laws of State W as represented.

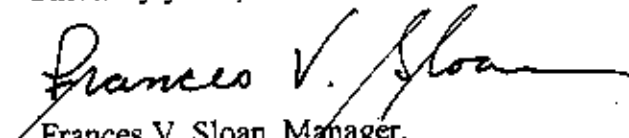
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact Esquire (ID: -) at either (Phone) or (FAX). Please address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,


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

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose