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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG - 4 2005

Uniform Issue List 408.00.00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

IRA 1:

Trust E:

Sub Trust F

Company G:

Account H

Date 1

Date 2

Date 3:

Date 4:

State U:

Dear

This is in response to the July 7, 2003, letter, as supplemented by correspondence dated June 21, 2004, July 12, 2004, May 18, 2005, May 25, 2005, June 27, 2005 and June 28, 2005 submitted by your authorized representative on your behalf, in which you request a series of private letter rulings under sections 401(a)(9) and 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A died on date 3, 2002, a resident of State C. Taxpayer A had not attained age 70 ½ as of the date of his death. Taxpayer A was survived by his wife, Taxpayer B.

At the time of his death, Taxpayer A was the owner of IRA 1 which he maintained with Company G. IRA 1 met the requirements of section 408(a) of the Internal Revenue Code. On Date 1, 2001, Taxpayer A established Trust E. On Date 2, 2001, Taxpayer A named Trust E as the beneficiary of Taxpayer A's IRA 1. Upon the death of Taxpayer A, Taxpayer B became the trustee of Trust E.

Pursuant to Article VIIA of Trust E, the entire IRA 1 payable to Trust E went to Sub Trust F, created under the terms of Article X of Trust E, upon the death of Taxpayer A. Article X of Trust E provides, in relevant part, that the net income of Sub Trust F is to be paid to Taxpayer B for her life and, in addition, as much of the principal as is necessary to maintain her accustomed manner of living is to be paid to Taxpayer B. Furthermore, the Trustee of Trust E and Sub Trust F is to pay to Taxpayer B beginning with the calendar year of Taxpayer A's death (2002), an amount not to exceed the greater of five percent (5%) or Five Thousand Dollars ($5,000) of the principal of the trust as Taxpayer B may in writing request in each calendar year ("5x5 right"). Such 5x5 right of withdrawal shall be noncumulative.

Article XB. of Trust T provides that, upon the death of Taxpayer B, the property of Sub Trust F is to be distributed pursuant to Taxpayer B's limited power of appointment to one or more of Taxpayers A's descendants. In the absence of Taxpayer B's exercise of her limited power of appointment, the Sub Trust F property is distributed to Taxpayer A's descendants then living, per stirpes. Pursuant to Article XI of Trust E, the shares for Taxpayer A's living children are distributed outright to each such child. None of Taxpayer A's children is older than Taxpayer B.

Article XVIIIB of Trust E provides, in relevant part, that the Trustee may, in the Trustee's absolute discretion, exercise any right to determine the manner and timing of payment of Qualified Retirement Benefits that is available to the recipient of the benefits, but the Trustee must comply with the requirements of Code section 401(a)(9). The provisions of Trust E indicate that "Qualified Retirement Benefits" include IRAs.

Article XXF10 of Trust E provides, in relevant part, that the Trustee has absolute discretion concerning distributions of income and principal thereof except for payments framed in "...terms of health, education and support (including support in an accustomed manner of living),,,"

Article XXE of Trust T provides, in relevant part, that "The interpretation and operation of the trust shall be governed by the laws of State U".

After Taxpayer A's death, Taxpayer B met with an advisor from Company G and was told that IRA 1 could be paid out over a substantial period of time which was consistent with the IRA terms. However the advisor prepared a form for her to sign that called for immediate distribution of the full IRA 1 balance. Company G did not advise Taxpayer B to seek other legal or tax advice on this matter. Relying on the representations made by the Company G advisor, Taxpayer B signed the "Distribution Request from IRA" form in her capacity as Trustee of Trust E on Date 4, 2002. The form directed that IRA 1 be terminated and the amounts be distributed to Account H. Account H is not an IRA and has not been commingled with any other accounts. Taxpayer B was unaware that the IRA 1 distribution was taxable until she received a Form 1099-R from Company G.

Your representative has asserted that the income interest and 5x5 right for 2002 were valued at $[redacted] The total of $[redacted] was determined as follows: income interest value of $[redacted] and 5x5 right of $[redacted] Your authorized representative has asserted that the portion of the 2002 IRA distribution allocable to income was calculated based on section 12 of the Uniform Principal and Income Act, followed by State U, which provides that up to [redacted]% of a distribution could be allocated to income. The IRA distribution was $[redacted]; therefore, the income is equal to $[redacted] .

It is proposed that, if the Service grants favorable responses to the requested letter rulings, Taxpayer B will roll over the income and 5x5 right amounts for 2002 in IRA 1 (an amount not to exceed $[redacted]) into an IRA set up and maintained in the name of Taxpayer B after initially contributing said amounts into another IRA set up in the name of Taxpayer A to benefit Taxpayer B as a beneficiary of Sub Trust F created under the terms of Trust E.

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

1. That, pursuant to Revenue Procedure 2003-16, Taxpayer B is granted a period of time, not to exceed 60 days as measured from the date of this letter ruling, to contribute the amounts distributed from IRA 1 on or about Date 4, 2002, to the extent such amounts do not exceed $[redacted], into another individual retirement arrangement (IRA) described in section 408(a) of the Internal Revenue Code maintained in the name of Taxpayer A (decedent) for the benefit of Taxpayer B, a beneficiary of Sub Trust F created under the provisions of Article X of Trust E

2. Taxpayer B is eligible to roll over an amount distributed from IRA1 and rolled over into the recipient IRA equal to her income and 5x5 right interests for the 2002 year in said IRA 1 into an IRA set up and maintained in her own name; and

3. Taxpayer B will not be required to include in gross income for federal income tax purposes any portion of the amounts distributed from IRA 1 on or about Date 4, 2002, and, pursuant

to rulings 1 and 2, eventually rolled over into an IRA set up and maintained in the name of Taxpayer B.

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 Code 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. A surviving spouse may also elect to roll over IRA proceeds into another IRA set up and maintained in the name of the deceased for the benefit of the surviving spouse.

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.

Rev. Proc. 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.

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.

Pursuant to Code section 408(d)(3), a surviving spouse may roll over a distribution from an IRA into another IRA, either set up and maintained in the name of the surviving spouse or set up and maintained in the name of the deceased for the benefit of the surviving spouse, as long as the surviving spouse is the sole payee or distributee of the distributing IRA (or a defined portion thereof). In this case, IRA 1 was allocated to Sub Trust F created under the terms of the Trust E by the trustee of said Trust E and Sub Trust F, Taxpayer B, the decedent's widow. Pursuant to Article X of the Trust E which governs Sub Trust F, said widow, Taxpayer B, is entitled to receive the net income of Sub Trust F, as much principal from Sub Trust F that Taxpayer B requires for her health, education and support in her accustomed manner of living or maintenance, and an amount from trust principal not to exceed 5% or $5,000 annually as requested by Taxpayer B in writing. Article X(B) of the Trust E provides for disposition of the remainder interest of Sub Trust F.

The language of Article X gives Taxpayer B the income generated by the trust, a limited right to principal subject to an ascertainable standard, and an annual, non-cumulative, 5x5 right to trust principal.

Article X does not give Taxpayer B the unqualified right to accelerate receipt of the income and principal to which she is entitled. Such right of acceleration requires consent of other beneficiaries of Sub Trust F.

In short, the language of Article X does not give decedent's widow, Taxpayer B, an unqualified right to all amounts held in the Sub Trust F. To begin with, Taxpayer B does not have the absolute, unfettered right to receive the principal of Trust E since under Trust E terms, with the exception of her 5x5 right, said principal is payable to her only if it meets the ascertainable standard set forth in Trust E. Furthermore, the remainder interest of Sub Trust F in IRA 1 is not the property of Taxpayer B but rather of the remainderman (men) named pursuant to the language of Article X of the Trust E. Since the remainder interest of Sub Trust F is not the property of Taxpayer B, the trustee of the Trust E and Sub Trust F could not pay or distribute said interest to her. Thus, due to her limited right to receive Trust E (Sub Trust F) principal, and because the remainder interest could not be paid or distributed to Taxpayer B, Taxpayer B cannot be treated as the sole "payee" or "distributee" of the whole of said IRA 1.

Thus, in summary, the facts surrounding this letter ruling request indicate that Taxpayer B is the sole, unconditional, named beneficiary of distinct portions of IRA 1. Said portions consist of an annual, non-cumulative, 5x5 right to principal, and trust income. Receipt of said income and limited principal amounts by Taxpayer B is not dependent on the actions or consent of any third parties. As such, although Taxpayer B could not elect to treat said portion(s) of IRA 1 as her own, she could have elected to roll over said portion(s) into either another IRA set up and maintained in the name of Taxpayer A or another IRA set up and maintained in her name.

As the facts of this ruling request indicate, Taxpayer B did not roll the said Date 4, 2002, IRA 1 distribution into another IRA either set up in the name of Taxpayer A benefiting Taxpayer B as beneficiary of Sub Trust F created under the terms of Trust E, or set up and maintained in the name of Taxpayer B, within the requisite 60-day period. However, the facts surrounding this letter ruling request also indicate that Taxpayer B would have been eligible to do so to the extent the distribution did not exceed $37,105.31. The permissible rollover would have been, and is, limited to the portion(s) of said distribution that consisted of the trust income for calendar year 2002 and the amount of principal determined under her 5x5 right for calendar year 2002. The failure of Taxpayer B to roll over said portions resulted from Company G's failure to provide documentation for Taxpayer B to sign consistent with the information it provided her relating to permissible IRA payout options which information Taxpayer B relied upon in signing the proffered documents.

Based on the facts of this case, we believe that good cause exists to extend the 60-day rollover period found in Code section 408(d)(3(A) with respect to the Date 4, 2002, distribution to the extent said distribution represented the value(s) of Taxpayer B's calendar year 2002 income and 5x5 right interests in Taxpayer A's IRA 1 or $[redacted]

Thus, with respect to your ruling requests, based on the specific set of facts presented in this case, we concludes as follows:

1. That, pursuant to Revenue Procedure 2003-16, Taxpayer B is granted a period of time, not to exceed 60 days as measured from the date of this letter ruling, to contribute the amounts distributed from IRA 1 on or about Date 4, 2002, to the extent such amounts do not exceed the value(s) Taxpayer B's income interest and 5x5 right for calendar year 2002, or $[redacted] into another individual retirement arrangement (IRA) described in section 408(a) of the Internal Revenue Code maintained in the name of Taxpayer A (decedent) for the benefit of Taxpayer B, a beneficiary of Sub Trust F created under the provisions of Article X of Trust E;

2. That Taxpayer B is eligible to roll over an amount distributed from IRA1 and rolled over into the recipient IRA referenced in the first ruling request equal to her income and 5x5 right interests for the 2002 year in said IRA 1 into an IRA set up and maintained in her own name; and;

3. Taxpayer B will not be required to include in gross income for Federal income tax purposes for the year(s) of distribution (2002) and of contribution any portion of the amounts distributed from IRA 1 on or about Date 4, 2002, and, pursuant to rulings 1 and 2, eventually rolled over into an IRA set up and maintained in the name of Taxpayer B. Consistent with the initial two rulings, this third ruling is limited to the values of Taxpayer B's income and 5x5 right interests, or $[redacted].

This letter is based on the assumption that decedent's IRA 1 either met or meets the requirements of Code section 408(a) at all times relevant thereto. It also assumes that the IRA or IRAs into which the permissible rollover amount is/are contributed also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Trust E and Sub Trust F are valid under the laws of State U.

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

If you have any questions or seek additional information concerning this letter ruling, please contact (not a toll-free number)) or (

Sincerely yours,

Frances V Sloan

Employee Plans Technical group 3

Enclosures:
Deleted copy of letter ruling
Form 437