



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200544032

AUG - 8 2005

*Uniform Issue List 408.00-00*

SE.T:EP:RA:T3

**LEGEND:**

Decedent A =

Date M =

Date N =

Date P =

IRA X =

Amount Q =

Dear

This is in response to your request dated March 14, 2005, submitted by your authorized representative, in which you request a series of letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Decedent A, whose date of birth was Date M, 1936, died on Date N, 2004. You are the surviving spouse of Decedent A. Your date of birth is Date P, 1941. At the time of his death, Decedent A maintained IRA X, an individual retirement arrangement described in section 408(a) of the Code. Decedent A had not reached the required beginning date as defined in section 401(a)(9)(C) for distributions from IRA X.

Decedent A did not designate a beneficiary of IRA X. As a result, the disposition of IRA X was governed by the following clause from IRA X: "I understand that if no designated beneficiary survives me or if the custodian cannot locate the beneficiary, the custodian will distribute the benefits to my estate."

You are the sole executor of Decedent A's estate and the sole residuary beneficiary under his will.

The amount held in IRA X at the date of Decedent A's death was Amount Q. No distributions have been made from IRA X since his death.

You, as sole executor of the estate of Decedent A, propose to take a complete distribution from IRA X prior to November 1, 2005, and immediately distribute the entire proceeds to yourself as the surviving spouse and sole beneficiary of the estate. You then propose, within 60 days after the date of the distribution of IRA X proceeds to the estate, to contribute the entire proceeds to an IRA set up and maintained in your name. This will be effectuated as a direct transfer from IRA X to your IRA.

IRA X has met and will meet the requirements of section 408 of the Internal Revenue Code at all times relevant to the transaction and the proposed transfer will satisfy all other applicable requirements of section 408(d)(3).

Based on the above facts and representations, you, through your authorized representative, request a ruling that the transfer from IRA X to an IRA maintained in your name, will qualify as a tax deferred transaction within the meaning of 408(d)(3) of the Code, and that the transfer will not result in income to either the estate of Decedent A or to you as surviving spouse in the year of the transfer under section 408(d)(1).

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.

Code section 408(a)(6) provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Section 401(a)(9)(B)(ii) of the Code provides, in general, that if an employee (IRA holder) dies prior to the date distributions are required to begin, the entire employee interest (IRA) must be distributed within 5 years after the death of the employee (IRA holder).

On April 17, 2002, final Income Tax 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 or an estate.

In this case, the IRA X account balance remaining at Decedent A's death is payable to Decedent A's estate. You, Decedent A's surviving spouse, are the executor of Decedent A's estate and the sole residuary beneficiary of the Decedent' A's estate. As executor, you will cause the IRA X proceeds to be paid to Decedent A's estate after which you will allocate them to yourself as the sole beneficiary of the estate. You will then transfer the proceeds directly from the estate to an IRA in your name. Said transfer will occur within 60 days of the date the IRA amounts are distributed from IRA X.

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 a ruling that the transfer from IRA X to an IRA maintained in your name, will qualify as a tax deferred transaction within the meaning of 408(d)(3), and that the transfer will not result in income to either the estate of Decedent A or to you as surviving spouse in the year of the transfer (2005) under section 408(d)(1).

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).

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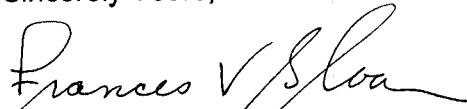
This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent

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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: