



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEC - 4 2006

Uniform Issue List: 408.01-00

T:EP:RA:T3

Legend:

- Decedent A =
- Bank B =
- Bank C =
- Bank D =
- Individual D =
- Individual E =
- State I =
- Trust K =
- Date M =
- Date N =
- Date P =
- Date Q =
- Date R =
- Amount T =
- Amount U =
- Amount V =
- Amount W =
- Amount X =

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**Legend (continued)**

Amount Y =

Amount Z =

IRA W =

IRA X =

IRA Y =

IRA Z =

Dear :

This is in response to your request dated September 19, 2006, for a private letter ruling, submitted by your authorized representative, concerning the proper treatment of a distribution from Decedent A's individual retirement Accounts ("IRAs") under section 408(d)(3) of the Internal Revenue Code (the "Code").

Your authorized representative has submitted the following facts and representations in support of your ruling request:

Decedent A was born on Date N, 1948, and died on Date P, 1995, while a resident of State I, prior to attaining age 70 ½. Your date of birth is Date M, 1951. You were married to Decedent A at the time of his death. Decedent A died testate. At the time of his death, Decedent A maintained IRA W, IRA X, IRA Y and IRA Z with Bank D. The beneficiary designations on file with Bank D listed Trust K as the beneficiary of IRAs W, X, Y, and Z. As of the date of the death of Decedent A, the value of IRA W was Amount W, the value of IRA X was Amount X, and the value of IRA Y was Amount Y. The value of IRA Z was Amount Z. No distributions have been made from any of these IRA accounts since Decedent A's death.

On Date Q, 1993, Decedent A established Trust K, a revocable trust. Trust K is valid under the laws of State I and became irrevocable upon Decedent A's death. Decedent A was the initial trustee of Trust K. Individual E and Bank B were named the co-trustees under the trust instrument to serve upon Decedent A's death. Bank B declined to serve as co-Trustee and you appointed Bank C to serve as successor Co-Trustee. Individual E and Bank C served as Co-Trustees until early 2006. Individual E resigned as Co-Trustee during calendar year 2006 and was replaced by Individual D. Thus, the current Trust K Co-Trustees are Individual D and Bank C.

The provisions of Trust K directs the Trustees to establish two subtrusts upon Decedent A's death: a Marital Trust, and a Family Trust. Section 2.4(A)(1) of Trust K directs that certain types of assets be directed to the Family Trust. It has been represented on your behalf that none of said types of assets were present in Decedent A's estate at the time of his death.

Section 2.4(A)(2) of Trust K provides for the allocation to the Marital Trust of assets sufficient to reduce Decedent A's estate tax to zero. The balance of the assets is allocated to the Family trust, pursuant to section 2.4(A)(3) of Trust K.

Section 2.4(A)(2) of the Marital Trust provides:

The Trustee shall ascertain and allocate to the Marital Trust an amount which shall equal in value the maximum allowable marital deduction as finally determined for federal estate tax purposes, diminished by the value for such purposes of all other items in Settlor's gross estate which pass or have passed to or for the benefit of Settlor's spouse under provisions of Settlor's Will, the terms of this Trust [K] Agreement or otherwise in such manner as to qualify for and be allowed as a marital deduction; provided, however that this amount shall be reduced by an amount, if any, needed to increase the Settlor's taxable estate to the largest amount which, after allowing for the unified credit against the federal estate tax, and the credit for state death taxes, will result in the federal estate tax imposed on the Settlor's estate being zero or the smallest possible amount. The credit for state death taxes shall be taken into account in determining the amount to be allocated to the marital share only to the extent that it does not cause an increase in the amount of taxes payable to any state.

The Trustee shall satisfy the amount provided for the Marital Trust only out of assets that qualify for the marital deduction under the provisions of the Internal Revenue Code applicable to the Settlor's estate or out of the proceeds of such assets, and this amount shall not be reduced by any estate, inheritance, transfer, succession, legacy, excise taxes on the excess retirement accumulation, or similar taxes chargeable against the Settlor's estate of this Trust.

The Amount provided for the Marital Trust, as well as any other pecuniary bequest or any other distribution made of assets of this trust estate, may be satisfied in cash or in specific property, real or personal, or an undivided interest therein, or partly in case and partly in such property, and in installments or all at one time; provided, that any assets so distributed in kind shall be valued at their date or dates of distribution values.

Subject: to the foregoing, the Trustee's decision as to which assets shall be distributed in satisfaction of the amount given to the Marital Trust shall be conclusive and binding on all persons.

Section 2.5A of Trust K provides that commencing with the date of death of Decedent A, the trustee(s) of Trust K shall pay the net income of the Marital Trust, not less frequently than quarter-annually, to you, Decedent A's surviving spouse.

Section 2.5B of Trust K gives you, Decedent A's surviving spouse, the right to withdraw, in writing, the principal of the Marital Trust. Your right to withdraw said principal is without limit.

The value of Trust K, as of the date of Decedent A's death, was Amount U. The date of death value of IRA s W, X, Y, and Z totaled Amount V. The remaining value was composed of life insurance death benefits and an insurance premium refund. The applicable exclusion amount for the year of Decedent A's death was Amount T.

The Co-trustees satisfied their obligations under the law of State I by allocating life insurance proceeds to the Family Trust, and IRAs W, X, Y, and Z to the Marital Trust.

No later than Date R, 1997, you exercised your right to withdraw the assets of the Marital Trust. Pursuant to this exercise, the Trustees distributed all of the assets of the Marital Trust to you, other than the amounts in IRAs W, X, Y, and Z. The Trustees inadvertently overlooked the IRAs, and failed to distribute them along with the other assets of the Marital Trust. You now propose to take the following steps with regard to the IRAs. First, Bank D will distribute all of the assets of IRA W, IRA X, IRA Y and IRA Z to the Trustees of Trust K ("Distribution Amount"); second, as a result of an exercise of your right of withdrawal of the assets of the Marital Trust, the Trust K Trustees will immediately distribute the Distribution Amount to you; and third, you will roll over the Distribution Amount into one or more individual retirement accounts described in section 408 of the Code set up and maintained in your name within 60 days from the date the Distribution Amount is received by the trustees of Trust K, pursuant to Code section 408(d)(3).

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

1. That IRA W, IRA X, IRA Y and IRA Z will not be treated as inherited IRAs as to you, pursuant to section 408(d)(3) of the Code, and that you are eligible to roll over the entire Distribution Amount into one or more IRAs set up and maintained in your name, so long as the rollover(s) of the Distribution Amount occurs no later than 60 days after the date the Distribution Amount is received by the trustees of Trust K;
2. That, to the extent timely rolled over into one or more IRAs set up and maintained in your name, the Distribution Amount will not be included in the gross income of either you or Trust K in the year in which distributed from IRAs W, X, Y, and Z; and
3. That neither you nor Trust K was required to withdraw any required minimum distributions from either IRA W, IRA X, IRA Y or IRA Z, pursuant to section 401(a)(9) of the Code, with respect to any calendar year (including the calendar year of distribution) prior to your rollover of the Distribution Amount into one or more IRAs of your own.

With respect to your ruling requests section 408(d)(1) of the Code 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.

Section 408(c)(2) of the Code states that in the case of any eligible rollover distribution, the maximum amount transferred to which the preceding sentence refers shall not exceed the portion of such distribution which is includible in gross income.

Section 408(d)(3) of the Code 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).

Section 408(d)(3)(A)(i) of the Code 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.

Section 408(d)(3)(B) of the Code provides, generally, that Code subsection 408(d)(3)(A)(1) does not apply to a distribution received from an IRA if at any time during the 1-year period ending on the date of receipt the receiving individual received any other amount described in said Code subsection which was not includible in his gross income because of the application of said subsection.

Section 408(d)(3)(C)(i) of the Code 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.

Section 408(d)(3)(C)(ii) of the Code 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 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.

Section 408(a)(6) provides that rules similar to the rules of Code section 401(a)(9) shall apply to IRAs.

Section 401(a)(9)(C)(i) provides that with respect to IRAs, the term "required beginning date" means April 1<sup>st</sup> of the calendar year following the calendar year during which the IRA holder attains age 70 ½.

Section 401(a)(9)(B)(iv)(I) of the Code provides that if a plan participant/IRA holder dies prior to his required beginning date, and his designated beneficiary is his surviving spouse, distributions from either a qualified plan or an IRA to the spouse need not begin until the date on which the deceased would have attained age 70 ½.

Section 408(d)(3)(E) of the Code provides that this paragraph (section 408(d)(3)) does not apply to any amount required to be distributed under either Code section 408(a)(6) or Code section 408(b)(3).

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to sections 401(a)(9) and 408(a)(6) of the Code. (See also 2002-19 I.R.B. 852, May 13, 2002).

Section 1.401(a)(9)-3 of the "Final" regulations, Question and Answer 3(b), provides that in the case where an IRA holder dies prior to his required beginning date and his surviving spouse is his sole designated beneficiary, distributions from his IRA must commence on or before the later of-(1) the end of the calendar year immediately following the calendar year

in which the employee died and (2) the end of the calendar year in which the employee would have attained age 70 ½.

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.

The Preamble to the "Final" 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 and/or an estate.

In this case, you have total access, and total right of withdrawal with respect to, the funds in IRA W, IRA X, IRA Y and IRA Z. As noted above, the provisions of Trust K give you the right of withdrawal of the assets of the Marital Trust., and wide authority to determine how much of the assets of Marital Trust you may withdraw. Consistent with such right of withdrawal, you intend to request a distribution of the balance of Decedent A's IRAs. Upon receipt, you, as Marital Trust beneficiary, intend to accomplish a timely rollover of the distributed amounts into one or more IRAs that will be set up in your name. Under this set of circumstances, all action taken with respect to both the distributions from IRAs W, X, Y, and Z, and the subsequent rollover(s) into an IRA (or IRAs) will be in accordance with the terms of Trust K and will be taken by you and not by any third party.

Thus, with respect to your first ruling requests, we conclude:

1. That IRA W, IRA X, IRA Y and IRA Z will not be treated as inherited IRAs as to you, pursuant to section 408(d)(3) of the Code, and that you are eligible to roll over the entire Distribution Amount into one or more IRAs set up and maintained in your name, so long as the rollover of the Distribution Amount occurs no later than 60 days after the date the Distribution Amount is received by the trustees of Trust K;
2. That, to the extent timely rolled over into one or more IRAs set up and maintained in your name, the Distribution Amount will not be included in the gross income of either you or Trust K in the calendar year in which distributed from either IRA W, IRA X, IRA Y, or IRA Z ; and
3. That neither you nor Trust K was required to withdraw any required minimum distributions from either IRA W, IRA X, IRA Y or IRA Z, pursuant to section 401(a)(9) of the Code, with respect to any calendar year (including the calendar year of distribution) prior to your rollover of the Distribution Amount into one or more IRAs of your own.

This letter ruling is based on the assumption that IRAs W, X, Y, and Z either were, are, or will be described in Code section 408(a) at all times relevant thereto. It also assumes the correctness of all facts and representations alluded to therein.

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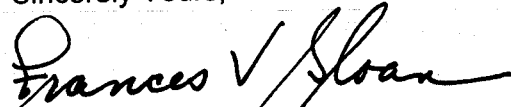
This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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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: