



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200608029

NOV 29 2005

SE.T.EP:RA:T3

UICs: 408.00-00
408.03-00

Legend

Taxpayer A =

Taxpayer B =

Company A =

Bank B =

IRA X =

Plan X =

State W =

Dear [REDACTED]:

This is in response to your [REDACTED], letter, as supplemented by a letter dated [REDACTED], in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code ("Code").

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

Taxpayer A, whose date of birth was [REDACTED], died a resident of State W on [REDACTED], 2003, not having attained age 70 ½. Prior to his death, Taxpayer A had set up an individual retirement arrangement ("IRA"), IRA X, described in section 408(a) of the Code, with Bank B. Taxpayer B is the sole named beneficiary of Taxpayer A's IRA X. Taxpayer B has not attained age 70 ½.

On [REDACTED], 2003, Taxpayer A requested that all amounts standing to his credit under Plan X, a plan qualified within the meaning of Code section 401(a), sponsored by Company A, be distributed to him in a single sum. The [REDACTED], 2003, request indicated that Taxpayer A elected to have his Plan X distribution be "Directly Rolled Over" into one or more IRAs, indicated that the recipient IRA was IRA X held with

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Bank B, and also indicated that any check representing the distribution of his Plan X account balance was to be made payable to Bank B F/B/O Taxpayer A. Taxpayer B, as Taxpayer A's spouse, consented to Taxpayer A's distribution choice.

Two surrender checks dated _____, 2003 totaling Amount 1 and payable to Bank B as custodian of Taxpayer A's IRA X were mailed to Taxpayer A on _____, 2003, the date of Taxpayer A's death.

Taxpayer B is Taxpayer A's surviving spouse, the sole executrix of his estate, and the sole beneficiary thereof. Subsequent to Taxpayer A's death, Taxpayer B attempted to contribute the two surrender checks, referenced above, to Taxpayer A's IRA X. However, Bank B refused to accept said checks because the checks were dated after Taxpayer A's death. On or about _____, 2003, Company A advised Taxpayer B's counsel that it would reissue the two surrender checks to the Estate of Taxpayer A. Pursuant to an agreement between Taxpayer B's counsel and Company A, on _____, 2004, said surrender checks were reissued to the Estate of Taxpayer A. Taxpayer B subsequently deposited the checks in a non-qualified savings account. The deposited amounts remain in said savings account and Taxpayer B represents that Amount 1 has not been used for any purpose.

Taxpayer B intends to contribute an amount not to exceed Amount 1 into an IRA set up and maintained in the name of Taxpayer A. If possible, said contribution will be made to the above-referenced IRA X. If the contribution is made to IRA X, Taxpayer B, as named beneficiary thereof, will receive a distribution of the contributed Amount 1 and within 60 days of receipt of the IRA X distribution, Taxpayer B will roll over said distribution into an IRA set up and maintained in her name.

Based on the facts and representations, you request the following letter rulings:

1. That, pursuant to Code section 402(c)(3)(B) and Revenue Procedure 2003-16, Taxpayer B be permitted to roll over an amount not to exceed Amount 1 into an IRA set up and maintained in the name of Taxpayer A; and
2. That if Taxpayer B is the named beneficiary of the rollover IRA referenced in ruling request 1, then she is permitted to roll over said rolled over Amount 1 into an IRA set up and maintained in the name of Taxpayer B.

With respect to your first ruling request, Code section 402(a) provides that amounts distributed from a trust described in section 401(a) which is tax exempt under section 501(a) shall be taxed to the distributee, in the taxable year in which distributed, under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs. Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Code section 402(c)(4) defines "eligible rollover distributions". In general, a single sum distribution from a retirement plan qualified within the meaning of Code section 401(a) constitutes an "eligible rollover distribution".

Section 402(c)(9) of the Code provides, generally, that the provisions of Code section 402(c) apply to a distribution attributable to the death of an employee which is payable to the surviving spouse thereof after the employee's death.

Section 1.402(c)(2) of the Income Tax Regulations, Question and Answer-7(b) provides that any amount paid from a retirement plan qualified within the meaning of Code section 401(a) before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Q&A-4, indicates that a direct rollover may be accomplished by providing the distributee with a check and directing the distributee to deliver the check to an eligible retirement plan. In such a case, the check should be made payable to a trustee as trustee of a named eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) 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(c)(3)(B) of the Code.

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 documentation presented by Taxpayer B demonstrates that Taxpayer A did not timely roll over into an IRA set up in his name the checks dated , 2003 payable to Bank B the custodian of Taxpayer A's IRA X because Taxpayer A had died prior to the date the checks were received which led to confusion on the part of Taxpayer B, Company A and Bank B with respect to the proper method of handling said checks. The documentation also indicates that Taxpayer A had made the checks payable to the custodian of his IRA X evidencing an intent on his part to directly contribute said checks into an IRA with Bank B. Taxpayer B is the surviving spouse of Taxpayer A and the sole executrix of his estate. She proposes to complete Taxpayer A's intended rollover..

Based on the above, pursuant to section 402(c)(3)(B) of the Code, the Service hereby concludes that Taxpayer B's intended action, taken as Taxpayer A's surviving spouse and executrix of Taxpayer A's estate, whereby she will contribute the checks representing proceeds of Taxpayer A's Plan X distribution into an IRA in the name of Taxpayer A within 60 days of the date of this letter ruling, will comply with the requirements of Code section 402(c) and will be deemed to constitute a valid rollover contribution pursuant to said Code section.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code, if any.

With respect to your second ruling request, section 408(a) of the Code provides that, for purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets certain requirements.

Section 408(d)(1) of the Code provides the general rule for the tax treatment of distributions from IRAs. This section provides, in pertinent part, that except as otherwise provided in subsection (d), any amount paid or distributed out of an individual retirement plan or under an individual retirement annuity 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(d)(3) of the Code establishes an exception to the contribution rules of section 408(a)(1) and the income inclusion rule of section 408(d)(1) for certain transactions characterized as rollover contributions. Under section 408(d)(3), an amount is described in paragraph (3) as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

Subparagraph (A) of section 408(d)(3) of the Code states, in pertinent part, that paragraph (1) of section 408(d) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if -- (i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement

annuity (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.

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

Subparagraph (C) of section 408(d)(3) provides, in general, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs. In general, an inherited IRA is an IRA payable at, and as a result of, the death of an IRA holder to a beneficiary who is not the surviving spouse of the deceased IRA owner.

Subparagraph (E) of section 408(d)(3) provides, in general, that the rollover rules of Code section 408(d)(3) do not apply to amounts required to be distributed pursuant to Code section 401(a)(9) (made applicable to IRAs pursuant to Code section 408(a)(6)).

In this case, as noted above, Taxpayer B is Taxpayer A's surviving spouse. As also noted, Taxpayer B is the sole named beneficiary of Taxpayer A's IRA X. As such, with respect to Taxpayer B, IRA X is not an inherited IRA. Thus, amounts distributed from IRA X to Taxpayer B as a result of the death of Taxpayer A are eligible to be rolled over into an IRA set up and maintained in the name of Taxpayer B.

Thus, with respect to your second ruling request, we conclude as follows:

That if Taxpayer B is the named beneficiary of the IRA into which Amount 1 will be rolled over, referenced in ruling request 1, she will be permitted to roll over said Amount 1 into an IRA set up and maintained in the name of Taxpayer B. Thus, if Amount 1 is initially rolled over into IRA X, an IRA set up by Taxpayer A prior to his death, of which Taxpayer B is the sole beneficiary named by Taxpayer A, then Taxpayer B may roll over a distribution of said Amount 1 made from IRA X into an IRA set up and maintained in her name. Said rollover into Taxpayer B's IRA must occur no later than the 60th day following the date on which Amount 1 is distributed to Taxpayer B from IRA X.

This ruling letter is based on the assumption that Taxpayer A's IRA X is and was described in Code section 408(a) at all times relevant thereto as represented. It also assumes that the contributory IRA set up and maintained in the name of Taxpayer B into which Amount 1 may be rolled over will meet the requirements of Code section 408(a) as represented. Additionally, it assumes the correctness of all facts and representations made with respect thereto.

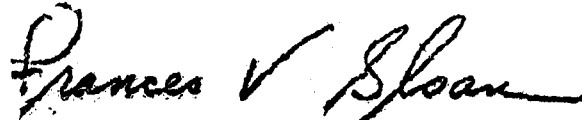
If you have any questions concerning this letter ruling, please contact _____, Esquire (ID: -) at _____ (not a toll-free number). Please address all correspondence to SE:T:EP:RA:T3.

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 ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan". The signature is fluid and cursive, with a large initial "F" and a long, sweeping underline.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures: Deleted copy of this letter
Notice of Intention to Disclose, Notice 437