200646026

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T3

AUG 2 1 2006

UICs: 408.00-00
408.03-00
408.06-00

LEGEND:

Decedent:

Spouse

Daughter:

Son:

Employee:

Trust T:

IRA X:

Account Y:

Company M:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Month 1:

Month 2:

Court:

County:

State:

Dear :

This is in response to the , letter, as supplemented by correspondence dated , , , and , in which your authorized representative, on your behalf, requests several letter rulings under section 408(d) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent, whose date of birth was Date 1, 1928, died on Date 2, 2005 having attained age 70 ½. Decedent was survived by his wife, Spouse, a daughter, Daughter, and a son, Son.

At his death, Decedent maintained an individual retirement account, IRA X, with Company M. On Date 3, 2004, Decedent signed his Last Will and Testament. Article II of Decedent's Last Will and Testament created Trust T. By means of an undated beneficiary designation, which your authorized representative asserts was in effect as of the death of Decedent, Decedent named Trust T as the beneficiary of his IRA X.

On Date 4, 2005, Court of County of State issued Letters Testamentary to Spouse with respect to the estate of Decedent. On Date 5, 2005, the same Court issued Letters of Trusteeship to Spouse and Daughter with respect to Trust T created under Article II of Decedent's Last Will and Testament.

Trust T created under the provisions of Article II of Decedent's Last Will and Testament provides, in relevant part, that:

A. My trustees shall pay or apply all of the net income from said trust to Spouse during her lifetime, at convenient intervals, but not less often than quarter-annually;

B. My trustees shall pay or apply such sum or sums out of the Trust principal to Spouse, or for her benefit, as my trustees shall determine to be required for Spouse's health, education, support and maintenance according to the standard of living to which she is accustomed at the time of my death, or because of any illness, operation, infirmity or other medical expenses she may incur. Notwithstanding anything to the contrary, the trustee shall also pay to Spouse portions or all of the trust property as Spouse requests from time to time in writing without limitation.

During Month 1, 2005, Spouse signed a distribution form with respect to Decedent's IRA X on which she indicated that she wished to receive a one-time only distribution of the full amount standing in IRA X. During the following month, Month 2, 2005, the full amount standing in IRA X, Amount 1, was transferred to Account Y, a non-IRA account. Approximately five (5) months later, on or about Date 6, 2005, when the Federal Estate Tax Return relating to Decedent's estate was completed, Spouse's accountants noticed that Amount 1 had been transferred from IRA X to Account Y. Subsequent requests to Company M to re-transfer Amount 1 to an IRA were denied. This request for letter ruling soon followed.

It has been represented that Spouse was receiving Amount 2 monthly from IRA X prior to the transfer to Account Y. Additionally, Spouse continued to receive Amount 2 monthly from Account Y after the above-referenced transfer.

It has been represented that, on or about Date 7, 2005, which was prior to Month 2, 2005, your authorized representative sent a letter to Employee, an employee of Company M, in which your authorized representative advised Employee that all of the assets held by Decedent at his death on an individual basis "should be placed in the trust" (Trust T). As a result of this letter, Company M sent the above-referenced IRA X distribution form to Spouse which resulted in Amount 1 being transferred to Account Y.

It has also been represented by your authorized representative that the Date 7, 2005 letter was not intended to effectuate a total distribution of Amount 1 from IRA X, and that Spouse was not cognizant that the Date 7, 2005 letter and the Month 1 IRA X withdrawal would result in Amount 1 being distributed from an IRA, IRA X, into a non-IRA giving rise to unintended calendar year 2005 federal tax consequences.

It has been represented that an amount not less than Amount 1 has remained in Account Y from Month 2, 2005 until the date of this ruling request.

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

1. That IRA X does not constitute an "inherited IRA, within the meaning of Code section 408(d)(3)(C);

2. That Spouse was eligible to either roll over, or transfer, by means of a trustee-to-trustee transfer, Amount 1 distributed from IRA X into either an IRA set up and maintained in her name or another IRA set up and maintained in the name of the Decedent; and

3. That the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution from IRA X of Amount 1, because the failure to waive such requirement would be against equity or good conscience.

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).

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

Section 408(d)(3)(E) of the Code provides that paragraph (d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, in short, under circumstances that conform with the requirements of Code section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name 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.

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.

With specific respect to your first two ruling requests, on April 17, 2002, Final Income Tax Regulations ("publications") 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.

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 was payable to Trust T created under the terms of Decedent's Last Will and Testament. In relevant part, the provisions of Trust T provide that certain amounts shall be payable to Spouse and that Spouse has the right to withdraw any and all Trust T amounts in writing without limitation.

With respect to the first and second ruling requests, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., an estate or 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 either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, Decedent's interest in IRA X passed to his Trust T of which Spouse was the primary beneficiary with the right to withdraw any and all amounts from Trust T without restriction. As such, pursuant to the terms of Trust T, Spouse could have demanded, in writing, that the full IRA X balance be paid to her and the trustee(s) of said Trust T would have been obligated to comply with said demand. Under this set of circumstances, no third party could have prevented Spouse from rolling over, or transferring, by means of a trustee-to-trustee transfer, the full amount standing in IRA X into either an IRA set up and maintained in Spouse's name or another IRA set up and maintained in the name of Decedent.

Under this set of circumstances, we will not apply the general rule set forth above. Therefore, we conclude as follows with respect to your first two ruling requests:

1. That IRA X does not constitute an "inherited IRA, within the meaning of Code section 408(d)(3)(C); and

2. That Spouse was eligible to either roll over, or transfer, by means of a trustee-to-trustee transfer, IRA X into either an IRA set up and maintained in her name or another IRA set up and maintained in the name of the Decedent.

With respect to your third ruling request, as noted above, Amount 1 was not rolled into, or transferred, as a trustee-to-trustee transfer, into another IRA within 60 days of the date it was distributed from IRA X. However, the facts adduced in this case indicate that the distribution of Amount 1 from IRA X was the result of a letter from your authorized representative to Employee which letter was, as represented, misunderstood by Company M. Furthermore, it has been asserted that the form which Spouse signed was sent to Spouse as a result of the Date 7, 2005, letter, did not reflect Spouse's intent, and was signed by Spouse, who was relying upon the expertise of her authorized representative, on the assumption distributions in amounts approximating amounts distributed prior to Month 2 would continue. In short, the failure to accomplish a valid contribution of Amount 1 into another IRA was a result of Company M's misunderstanding Spouse's, authorized representative's Date 7, 2005, instructions, and Spouse's being unaware of the misunderstanding.

Therefore, based on the above facts, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Thus, you are granted a period of 60 days from the issuance of this ruling letter to accomplish the rollover of Amount 1 into either an IRA set up and maintained in the name of Spouse or an IRA set up and maintained in the name of Decedent. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into said IRA will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

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

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:T3.

Sincerely yours,

Frances V. Sloan

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

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose