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

200833028

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.01-00

MAY 21 2008

T:EP:RA:T3

Legend:

Decedent A =

Trust D =

State W =

Date L=

Date M =

Date N =

Date Q =

Date R =

Amount S =

IRA X =

Dear :

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated November 12, 2007, concerning the proper rollover treatment of distributions from Decedent A's individual retirement Account (IRA X ) under section 408d(3) of the Internal Revenue Code (Code). Correspondence dated February 11, 2008, and March 24, 2008 supplemented the request.

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

Decedent A was born on Date L, 1926, and died on Date M, 2005 at age 79, a resident of State W . You were married to Decedent A at the time of his death.

Decedent A maintained an individual retirement account ("IRA"), IRA X, at the time of his death. On Date R, 1993, he named Trust D as the beneficiary of his IRA X.

Trust D was executed on Date N, 1990, and has not been amended since the death of Decedent A.

The value of IRA X as of Date Q, 2007, was approximately Amount S.

Pursuant to Article 12.2 of Trust D you, as surviving spouse, are the successor trustee of Trust D. As sole trustee, you have full control over Trust D assets, pursuant to Article 12.3 of Trust D.

Articles 4.1 and 4.2 of Trust D provide for dispositions of personal and real property not pertinent to this ruling request. Pursuant to Article 4.3, you have the exclusive right to the residue of Trust D assets which excludes the above-referenced personal property and real estate assets which under Trust D terms are to be distributed to the children of Decedent A.

Pursuant to Article Four of Trust D, you, as trustee, intend to pay to yourself all amounts standing in IRA X payable to Trust D. Incident to said request, you will make a rollover contribution of Amount S, the IRA X assets, into an IRA set up and maintained in your own name and treat the rollover IRA as your own IRA. The rollover will occur no later than the 60th day following the day on which the IRA X assets are distributed to Trust D.

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

1. That Decedent A's IRA X will not be treated as an inherited IRA under Code section 408(d)(3)(C);

2. That for purposes of Code section 408(d)(3) and section 1.408-8 of the "Final" Income Tax Regulations (regulations), you may be treated as the beneficiary of Decedent A's IRA X so that the IRA X account balance may be distributed to you and rolled over from Decedent A's IRA X into an IRA set up and maintained in your name; and

3. That the amounts standing in IRA X which have been distributed and rolled over into an IRA set up and maintained in your name will not be included in your gross income and will not be taxed under Code section 408(d) in the year in which distributed

and in which received (2008).

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 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(d)(3)(E) of the Code provides, in general, that the rollover rules of Code section 408(d)(3) do not apply to any amounts required to be distributed in accordance with Code sections 401(a)(9) and 408(a)(6).

Code section 401(a)(9)(A) provides, in relevant part, that distributions from a retirement plan qualified within the meaning of Code section 401(a) must begin no later than the plan participant's "required beginning date" and must be paid over a period of time that may extend to the joint life expectancies of the plan participant and his/her designated beneficiary.

Code section 408(a)(6) extends the Code section 401(a)(9) requirements to IRAs described in Code section 408(a). Thus, in short, an IRA owner may receive required distributions over her life expectancy or over a period not to exceed the joint life expectancies of the IRA holder and her designated beneficiary.

On April 17, 2002, final Income Tax Regulations ("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.

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 and/or an estate.

With respect to your ruling requests, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., a 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, you are the sole current trustee and the residual beneficiary of Trust D. Under the terms of Trust D you have the unrestricted right, as trustee, to distribute the proceeds of IRA.X to yourself as beneficiary of Trust D. Pursuant to the provisions of Trust D, you, as trustee, will request that all amounts standing in IRA X be paid to Trust D, and then, as beneficiary, you will arrange a rollover contribution of the IRA X distribution into an IRA set up and maintained in your name. Said transaction will occur during calendar year .

The Service notes that under this set of circumstances, all actions taken with respect to both the request that the IRA X assets be paid to Trust D and the subsequent rollover contribution into an IRA set up and maintained in your name will be accomplished by you. Thus, 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:

1. That Decedent A's IRA X will not be treated as an inherited IRA under Code section 408(d)(3)(C);

2. That for purposes of Code section 408(d)(3) and section 1.408-8 of the "Final" Income Tax Regulations (regulations), you may be treated as the beneficiary of Decedent A's IRA X so that the IRA X account balance may be distributed and rolled over from Decedent A's IRA X into an IRA set up and maintained in your name; and

3. That the amounts standing in IRA X which have been distributed and rolled over into an IRA set up and maintained in your name will not be included in your gross income and will not be taxed under Code section 408(d) in the year in which distributed and in which.rolled over into your IRA (2008).

This ruling letter assumes that IRA X is qualified under section 408(a) of the Code 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.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact
. 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 letter ruling
Notice of Intention to Disclose