TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200245055

AUG 12 2002

Uniform Issue List Numbers: 401.06-00; 408.03-00

T:EP:RA:T1

****
****
****

Legend:
Taxpayer A = **********
****
****
Taxpayer B = **********
****
IRA C = **********
****
IRA D = **********
****
Trust E = **********
****
State F = **********

Dear **********:

This is in response to a letter dated November 28, 2000, as supplemented by additional correspondence dated January 22, February 26, and July 23, 2002, in which your authorized representative requested a private letter ruling regarding the status of certain individual retirement accounts established pursuant to section 408 of the Internal Revenue Code ("Code"). In support of the said letter ruling, you have provided the following facts and representations.

Taxpayers A and B (the "Taxpayers") were spouses prior to the death of Taxpayer B on ********** Until her death, Taxpayer B was the owner of two individual retirement accounts: IRA C and IRA D (together, "the IRAs"). Until ********** Taxpayer B named her husband, Taxpayer A, as the principal beneficiary of the IRAs.

On **********, *****, the Taxpayers established Trust E, which was described as a "revocable joint trust" established under the laws of State F. Under the terms of Trust E, Taxpayers A and B were the trust's grantors, its trustees, and its primary beneficiaries. As trustees, the Taxpayers were empowered, "after paying the necessary expenses of the management and preservation of the trust property, [to] pay over to or for the benefit of the Grantors during the Grantors' lifetime so much of the annual net income and such amount or amounts of principal as the Grantors may from time to time request." The Taxpayers also reserved the right to amend, modify, or revoke Trust E in whole or in part. Taxpayer B was born in December ****, and was 67 1/2 years old when she died in **********. Taxpayer A was born **********, ****, and is 68 years old at the time of the issuance of this ruling letter.

Shortly after the Establishment of Trust E, Taxpayer B filed change of beneficiary forms naming Trust E as the sole beneficiary of her IRAs. After the death of his wife, Taxpayer A became the sole authorized trustee of Trust E, with power to revoke the trust, in whole or in part, and/or distribute any portion of the earnings and/or corpus of the trust to himself (as an individual). Taxpayer A, as trustee of Trust E, proposes to direct the respective custodians of IRAs C and D to distribute the entire amount of Taxpayer B's IRAs to the trust in lump sums before the end of 2002.

Immediately upon receipt of the IRA distributions, Taxpayer A will direct that the entire amounts be redistributed to himself, in his own name and as an individual. Finally, within 60 days of Trust E's receipt of distributions from Taxpayer B's IRAs, Taxpayer A will roll over the entire amounts of the distributions into a qualified IRA established and maintained in own name.

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

(1) That IRAs C and D are not inherited IRAs as that term is defined in Code section 408(d)(3)(C)(i) with respect to Taxpayer A;

(2) That Taxpayer A may be treated as the distributee or payee of IRAs C and D and is eligible to roll over assets distributed from those IRAs to an IRA or IRAs maintained in his own name, provided the rollover of such distributions occurs no later than the 60th day from the date said distribution is received by Taxpayer A, as the trustee of Trust E;

(3) Taxpayer A will not be required to include in gross income for federal income tax purposes for 2002, the amounts so distributed from IRAs C and D and rolled over to an IRA or IRAs maintained by Taxpayer A in his own name.

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 his wife, may elect to treat those IRA proceeds as his own and roll them over into his own IRA.

On May 13, 2002, the Internal Revenue Service published final regulations governing required distributions from retirement plans in the "Internal Revenue Bulletin." See T.D. 8987, 2002-19 I.R.B. 852 ff.

Section 1.408-8 of the Income Tax Regulations, Question & Answer-5, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). Q&A A-5 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account have not been distributed within the appropriate time period applicable to the beneficiary of the decedent under section 401(a)(9)(B), or (2) any

additional amounts are contributed to the account which are subject, or deemed to be subject, to the lifetime distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Section 1.408-8 of the regulations Q & A-5(a) further provides, in relevant part, that a surviving spouse may make an election to treat the IRA of a deceased individual as his own only if he is the sole beneficiary of the IRA and has an unlimited right to withdraw amounts from the IRA. A surviving spouse may not treat an IRA as his own if a trust is the beneficiary of the IRA, even if that surviving spouse is a (or sole) beneficiary of the trust.

However, the Preamble to T.D. 8987 explains that, if a surviving spouse actually receives a distribution from an IRA that belonged to the deceased spouse, the surviving spouse is permitted to roll that distribution over within 60 days into an IRA in his or her own name to the extent that the distribution is not a required distribution, regardless of whether or not the surviving spouse is the sole beneficiary of the IRA owner. Further, if the distribution is received by the spouse before the year that the IRA owner would have been 70 1/2, no portion of the distribution is a required minimum distribution for purposes of determining whether it is eligible to be rolled over by the surviving spouse. See T.D. 8987, 2002 – 19 I.R.B. 852, at P. 858.

Generally, if the proceeds of a decedent's IRA are payable to a trust, are made payable to the trustee of the trust, and are then transferred by direction of the surviving spouse to an IRA set up and maintained in the name of the decedent's surviving spouse, said surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse shall, generally, not be eligible to roll over said distributed IRA proceeds into his own IRA. However, in a case where a trust is the beneficiary of a decedent's IRA and the surviving spouse is the sole trustee of the trust as well as the income beneficiary of the trust with the power to demand payment of a portion or all of the trust principal, and if the surviving spouse, as trustee, requests and receives payment of the remaining IRA assets, and, as income/principal beneficiary then rolls all or a portion of the assets of the deceased spouse into an IRA set up and maintained in his own name, the surviving spouse will be treated as having received the IRA proceeds from the decedent's IRA and not from the trust.

In this case, Trust E was the named beneficiary of Taxpayer B's IRAs, and her surviving spouse, Taxpayer A, is both the sole surviving trustee and principal beneficiary of the trust, with unlimited authority to distribute both principal and income to himself. Therefore, at such time as the distribution actually takes place, Taxpayer A will be treated as though he received the IRA proceeds directly from IRAs C and D, rather than from Trust E. Thus Taxpayer A, rather than the trust, will be treated as the distributee of IRA assets, rather than the trust.

Accordingly, with respect to your three ruling requests, the Service rules as follows:

(1) That IRAs C and D are not inherited IRAs as that term is defined in Code section 408(d)(3)(C)(i) with respect to Taxpayer A;

(2) That Taxpayer A may be treated as the distributee or payee of IRAs C and D and is eligible to roll over assets distributed from those IRAs to an IRA or IRAs maintained in his own name, provided the rollover of such distributions occurs no later than the 60th day from the date said distribution is received by Taxpayer A, as the trustee of Trust E;

(3) Taxpayer A will not be required to include in gross income for federal income tax purposes for 2002, the amounts so distributed from IRAs C and D and rolled over to an IRA or IRAs maintained by Taxpayer A in his own name.

This ruling letter assumes that IRAs C and D meet the requirements of Code § 408 at all times relevant thereto, and that the IRA established and maintained for Taxpayer A also meets the requirements of Code § 408 at all relevant times.

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

This letter ruling was drafted by ******* ********** ********** of this group. ********** can be reached at **********.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely,

Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1

Attachments:
- Deleted Copy of this Private Letter Ruling
- Notice 437, "Notice of Intention to Disclose"
- Copy of Cover Letter to Your Authorized Representative