



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
JUL 28 2004

200443035

UIL: 408.03-00

SET: EP: RA: T3

LEGEND:

Taxpayer A:

Taxpayer B:

Individual I:

IRA X:

IRA Y:

Account M

Brokerage Firm G:

Brokerage Firm H:

This is in response to the June 14, 2004 letter, submitted by your authorized representatives on your behalf, in which you request a series of letter rulings under section 408(d)(3) of the Internal Revenue Code. Your letter of June 14, 2004, was supplemented by a letter of July 15, 2004. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was September [redacted] died on April [redacted] prior to reaching the date at which distributions are required to begin from individual retirement accounts (IRAs). Taxpayer A was survived by his wife, Taxpayer B, whose date of birth was December [redacted]. At the time of his death, Taxpayer A maintained IRA X, an individual retirement arrangement with Brokerage Firm G. The primary beneficiary of IRA X was the Taxpayer A Revocable Living Trust dated April [redacted] as amended March [redacted] (the Trust).

The Trust provides that Trust assets be allocated to Trust B and Trust A. According to the terms of the Trust, "The Trustee shall first satisfy the allocation to Trust B with assets which do not qualify for the Federal Estate Tax Marital Deduction" The Trust further provided "The Trustee shall allocate the rest residue and remainder of the Trust Estate to Trust A; provided, however, that only assets which qualify for the Federal Estate Tax Marital Deduction shall be allocated thereto.

Based upon the value of the assets in Taxpayer A's estate as of the date of his death, IRA X was required to be allocated to Trust B of the Trust and no assets of the Trust were required to be allocated to Trust A of the Trust.

According to the terms of Trust B at 1.a "The Trustee shall distribute to the Grantor's spouse, Taxpayer B, the entire net income from Trust B. In addition thereto, the Trustee, in her sole and absolute discretion is authorized to use the principal of Trust B, even to the exhaustion of Trust B, as she may deem advisable, to or for the benefit of the Grantor's said spouse...."

Article IV of the April Trust authorized the Grantor, Taxpayer A, to revoke, alter or amend the Trust Agreement in whole or in part. The trustee of the April Trust was Individual I. On March the April Trust was amended and Taxpayer A became the trustee. In addition, Article X of the March Trust amendment at subparagraph B provided in part as follows:

"B. Upon the resignation of Taxpayer A as Trustee (by death or otherwise), Taxpayer B shall succeed as substitute or successor Trustee...."

On or about September Brokerage Firm G transferred the assets of IRA X to Account M entitled "Taxpayer B TTEE Taxpayer A Trust...." On or about October Brokerage Firm G transferred the assets of Account M, in their entirety to IRA Y at Brokerage Firm H. IRA Y was entitled "Taxpayer A Deceased FBO Taxpayer A Trust c/o Taxpayer B, Trustee...."

During Taxpayer B received a Form 1099R from Brokerage Firm G indicating the entire amount distributed from IRA X to Account M is taxable.

Taxpayer B as trustee and sole beneficiary of the Trust proposes to distribute IRA Y to herself and roll the distribution over to a new IRA in her name. Said distribution and rollover will occur no later than December

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

- 1 That the assets of IRA X were eligible to be rolled over in whole or in part by Taxpayer B, the surviving spouse of Taxpayer A, into IRA Y maintained in the name of Taxpayer A Deceased IRA f/b/o Taxpayer A Trust c/o Taxpayer B, Trustee, and to the extent they were timely rolled over, subject to ruling 6, were non-taxable to either the Trust or Taxpayer B in the year distribution was made from IRA X.
- 2 That IRA X does not constitute an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to Taxpayer B.

3 That pursuant to section 408(d)(3) of the Code, Taxpayer B is not required to include in income the amounts described in ruling 1

4 That the assets of IRA Y may be rolled over in whole or in part by Taxpayer B, the surviving spouse of Taxpayer A, into an IRA maintained in the name of Taxpayer B and to the extent rolled over, subject to ruling 6, is non-taxable in the year distributed from IRA Y and rolled over into Taxpayer B's IRA (2004).

5 That pursuant to section 408(d)(3) of the Code, Taxpayer B is not required to include in income in the year of distribution the amounts described in ruling 4.

6 That with respect to rulings 1 and 4 above, in no event may a required minimum distribution be rolled over or transferred from one IRA to another IRA.

7 That with respect to rulings 1 and 4, that in no event may more than one rollover take place within a one year period.

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(a)(6) provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Code section 408(d)(3)(E) provides that rollover treatment is denied to amounts required to be distributed by section 401(a)(9).

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

In this case, the IRA X account balance remaining at Taxpayer A's death was payable to Taxpayer A's Trust. Taxpayer B, Taxpayer A's surviving spouse, is the sole beneficiary and sole trustee of the Trust. As such, Taxpayer B caused the IRA X proceeds to be paid to the Trust after which she rolled the proceeds over to IRA Y maintained in the name of Taxpayer A (Deceased) for the benefit of the Trust. As trustee and beneficiary of the Trust, she will now cause the IRA Y proceeds to be distributed to her and rolled over to an IRA in her own name. Said rollover will occur within 60 days of the date the IRA amounts are distributed from IRA Y.

Under the facts stated above, Taxpayer B is to be treated as the payee and beneficiary of IRA X and IRA Y for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude as follows:

- 1 That the assets of IRA X may be rolled over in whole or in part by Taxpayer B, the surviving spouse of Taxpayer A, into IRA Y maintained in the name of Taxpayer A Deceased IRA f/b/o Taxpayer A Trust and to the extent rolled over, subject to ruling 6, is non-taxable to either the Trust or Taxpayer B in the year distribution was made from IRA X..
- 2 That IRA X does not constitute an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to Taxpayer B.
- 3 That pursuant to section 408(d)(3) of the Code, Taxpayer B is not required to include in income the amounts described in ruling 1
- 4 That the assets of IRA Y may be rolled over in whole or in part by Taxpayer B, the surviving spouse of Taxpayer A, into an IRA maintained in the name of Taxpayer B and to the extent rolled over, subject to ruling 6, is non-taxable..
- 5 That pursuant to section 408(d)(3) of the Code, Taxpayer B is not required to include in income the amounts described in ruling 4.
- 6 That with respect to rulings 1 and 4 above, in no event may a required minimum distribution be rolled over or transferred from one IRA to another IRA.
- 7 That with respect to rulings 1 and 4, that in no event may more than one rollover take place within a one year period.

This ruling letter assumes that IRA X and IRA Y either are or were qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by Taxpayer B will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Taxpayer B's rollover of the IRA Y distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

The author of this ruling is

SE:T:EP:RA:T3 who may be reached at .

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437