

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
August 05, 2019

Taxpayer	=
Decedent	=
Trust T	=
Subtrust S	=
Subtrust D	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
State S	=

Dear :

This is in response to your letter dated January 31, 2019, and your supplemental letter dated July 25, 2019, submitted on your behalf by your authorized representative, in which you request a series of rulings under sections 408(d) and 1001 of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the requested rulings.

Trust T was established by Decedent and Taxpayer on Date 1 and amended on Date 2. Taxpayer and Decedent were the Founders, Trustees, and beneficiaries of Trust T. While the Decedent and the Taxpayer were both alive, either Decedent or Taxpayer could revoke Trust T. Upon the death of either, Trust T became irrevocable. Decedent and Taxpayer live in State S which is a community property state.

The Decedent and Taxpayer delivered certain property to Trust T. Trust T provides that any contributions of separate property to Trust T by, or for the benefit of, either Founder shall remain separate property of such Founder. As to the separate property, Trust T provides that each founder may withdraw, remove, sell, or otherwise deal with their

respective separate property interests without restrictions. If Trust T is revoked, all separate property must be transferred, assigned, or conveyed back to the owning Founder as his or her respective property.

Trust T also provides that all community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless the Founders change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from Trust T retains its community property characterization. If Trust T was revoked by the Founders, all community property transferred to Trust T must be transferred back to the Founders as community property.

On Date 3, Decedent opened an individual retirement account (IRA). Trust T was named sole beneficiary of the IRA. It is represented that the IRA is community property under the laws of State S and was not Decedent's separate property.

Decedent was married to Taxpayer until his death on Date 4. Upon Decedent's death, Taxpayer became the surviving Founder and sole Trustee of Trust T. In addition, after Decedent's death, the assets of the IRA were transferred to an IRA for the benefit of Trust T.

The terms of Trust T state that upon the first of Taxpayer or Decedent to die, the assets of Trust T are to be divided into Subtrust S and Subtrust D. The terms of Trust T also allow the Trustee to make a non pro rata allocation of assets in cash or its equivalent, in kind, or in undivided interests between Subtrust S and Subtrust D. Taxpayer, as Trustee, has the power of allocation between the subtrusts.

Subtrust S consists of multiple shares. The terms of Trust T state, "Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to [Subtrust S's] Share One." Taxpayer, who is also the Trustee, represents that under the community property laws of State S, the Trustee is authorized to allocate particular community assets disproportionately between the deceased Founder's community portion of Trust T property and the surviving Founder's community portion of Trust T property provided that the value of the assets allocated to each share are equal. Taxpayer further represents that treating Decedent's entire IRA as part of the surviving Founder's community portion of Trust T property is permitted under State S law. Accordingly, Taxpayer represents that it is appropriate to treat the entire IRA as property of Share One under State S law and the terms of Trust T.

The terms of Trust T provide that the Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving grantor's lifetime, all of the net

income from Share One of Subtrust S. The terms also provide that the Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Share One of Subtrust S as the surviving Founder may at any time request in writing, and that no limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal. In addition, the surviving Founder holds an unlimited and unrestricted general power of appointment over the principal and undistributed net income of Subtrust S that may be exercised by a last will and testament, a living trust agreement, or a written exercise of the power of appointment.

Pursuant to the powers granted her with respect to Share One, Taxpayer represents that she intends to distribute the assets of the IRA to herself. Taxpayer then intends to roll over the distribution into one or more IRAs in her own name.

Based on the preceding facts, Taxpayer requests the following rulings:

1. The allocation of the IRA to Share One of Subtrust S will not be deemed a sale or other disposition of property under section 1001.
2. After the allocation of the IRA to Share One of Subtrust S, the IRA will continue to be an IRA within the meaning of section 408(a).
3. Taxpayer, as Decedent's spouse, will be treated as having acquired the IRA directly from Decedent, and not from Trust T.
4. Taxpayer is eligible to roll over the IRA distribution to one or more IRAs established and maintained in her own name pursuant to section 408(d)(3)(A)(i), provided that the rollover occurs no later than the sixtieth day following the day the proceeds of the IRA are received.
5. Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution from the IRA is made, any portion of the proceeds distributed from the IRA which are timely rolled over to one or more IRAs set up and maintained in Taxpayer's name.

With respect to your ruling requests, section 61(a)(3) provides that gross income includes gains derived from dealings in property and section 61(a)(14) provides that gross income includes income from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in section 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under section 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under section 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

Section 408(d)(1) 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.

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 408(d)(3)(B).

Section 408(d)(3)(A) 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: (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 he receives the payment or distribution, or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan 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) 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 one-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 his gross income because of the application of section 408(d)(3).

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 gross 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.

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.

Under the preceding facts, Decedent's IRA passed to Trust T upon Decedent's death. Because the IRA is allocated to Share One of Subtrust S, and Taxpayer is the Trustee

and sole beneficiary of Share One and is entitled to all income and the entire corpus of Share One, for purposes of applying section 408(d)(3)(A) to the IRA, Taxpayer is effectively the individual for whose benefit the account is maintained. Accordingly, if Taxpayer receives a distribution of the proceeds of the IRA, she may roll over the distribution (other than amounts required to have been distributed or to be distributed in accordance with section 401(a)(9)) into one or more IRAs established and maintained in her name. The allocation of the IRA to Share One of Subtrust S was made by the authority granted to the Taxpayer under the terms of Trust T and the laws of State S. The Taxpayer does not acquire her interest in the IRA as a result of the allocation to Share One of Subtrust S, but instead by reason of the exercise of the Taxpayer's existing authority under the terms of Trust T and the laws of State S.

Therefore, with respect to your ruling requests, we conclude:

1. The allocation of the IRA to Share One of Subtrust S by the authority granted to the Taxpayer under the terms of Trust T and the laws of State S will not be deemed a sale or other disposition and will not result in a realization of gain or loss under section 61 or 1001.
2. After the allocation of the IRA to Subtrust S, the IRA will continue to be an IRA within the meaning of section 408(a).
3. Taxpayer, as Decedent's surviving spouse, will be treated as having received the IRA assets directly from the IRA and not from Trust T, as well as being the individual for whose benefit the IRA is maintained.
4. Taxpayer is eligible to roll over the IRA distribution to one or more IRAs established and maintained in her own name pursuant to section 408(d)(3)(A)(i), provided that the rollover occurs no later than the sixtieth day following the day the proceeds of the IRA are received.
5. Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution from the IRA is made, any portion of the proceeds distributed from the IRA which are timely rolled over to one or more IRAs set up and maintained in Taxpayer's name.

This ruling does not authorize the rollover of amounts that are required to be distributed under section 401(a)(9) and is subject to the limitation in section 408(d)(3)(B).

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

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Code or regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, § 7.01(16)(b). This office

has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05. The controlling facts on which these rulings are based include, but are not limited to, Taxpayer's express and unequivocal representations that: under the community property laws of State S, Taxpayer, who is also the Trustee, is authorized to allocate particular community assets disproportionately between the deceased Founder's community portion of Trust T property and the surviving Founder's community portion of Trust T property provided that the value of the assets allocated to each share are equal; treating Decedent's entire IRA as part of the surviving Founder's community portion of Trust T property is permitted under State S law; and, accordingly, it is appropriate to treat the entire IRA as property of Share One under State S law and the terms of Trust T.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John T. Ricotta
Branch Chief
Qualified Plans Branch 3
(Employee Benefits, Exempt Organizations, and
Employment Taxes)