



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

201430027

APR 30 2014

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Decedent B =

Financial Institution C =

IRA D =

Court E =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear:

This letter is in response to your request dated October 24, 2012, from your authorized representative, in which you request rulings under section 408 of the Internal Revenue Code (the "Code").

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

Decedent B, whose date of birth was Date 1 died on Date 2, not having attained the age of 70 $\frac{1}{2}$. Decedent B was survived by his wife, Taxpayer A, whose date of birth is Date 3. At the time of his death, Decedent B maintained IRA D with Financial Institution C. Decedent B designated his Estate as the beneficiary of his interest in IRA D. Decedent B's Last Will and Testament ("Will") designates Taxpayer A, his wife, as the sole Executor of his Estate. Taxpayer A was appointed sole Executor of the Estate by Court E on Date 4. Article 3.1 of the Will provides, in part, that after payment of debts, funeral, and administrative expenses, the remainder of Decedent B's Estate is to be distributed to Taxpayer A.

Taxpayer A, in her capacity as sole Executor and as sole beneficiary of Decedent B's Estate, intends to receive the proceeds of IRA D and distribute those proceeds to herself in accordance with the terms of Decedent B's Will. After receipt of the IRA proceeds, Taxpayer A intends to roll over those proceeds into an Individual Retirement Account ("IRA") set up and maintained in her name, within 60 days of receipt of such proceeds.

Based on the facts and representations, Taxpayer A requests the following rulings:

1. That Taxpayer A will be treated, for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA D;
2. That IRA D will not be treated as an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to Taxpayer A;
3. That Taxpayer A will be eligible to roll over the proceeds from IRA D into an IRA set up and maintained in her own name, pursuant to section 408(d)(3)(A)(i) of the Code, as long as the rollover occurs no later than the 60th day from the date the proceeds are received by Taxpayer A in her capacity as sole Executor and sole beneficiary of Decedent B's Estate;
4. That Taxpayer A will not be required to include in her gross income for federal income tax purposes, for the year in which the distribution of IRA D and subsequent rollover is made pursuant to item 3 above, any portion of the amounts timely rolled over from IRA D to an IRA set up and maintained in Taxpayer A's name.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(C)(i) of the Code provides 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.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA acquired by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5 ("Q&A 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.

In the present case, Decedent B's interest in IRA D passes to his Estate. Taxpayer A is both the sole Executor and the sole beneficiary of Decedent B's Estate with the right to direct that, after payment of debts, funeral, and administrative expenses, the remainder of Decedent B's Estate be distributed to Taxpayer A.

Under this set of circumstances, no third party can prevent Taxpayer A from receiving the proceeds of IRA D and from rolling over IRA D into another IRA set up and maintained in the name of Taxpayer A.

Generally, if the proceeds of a decedent's IRA pass through a third party, e.g. a trust or an estate, and then are distributed to the decedent's surviving spouse, the surviving spouse shall be treated as having received the IRA proceeds from the third party and not from the decedent's IRA. Thus, generally a surviving spouse shall not be eligible to roll over the distributed IRA proceeds into his or her own IRA. However, the general rule will not apply in a case where the IRA has not yet been distributed and the surviving spouse as executor of the decedent's estate has sole authority and discretion to pay the IRA proceeds to him/her. In such a case, when the surviving spouse actually receives the IRA proceeds, the surviving spouse may roll over the amounts into an IRA set up and maintained in his/her name within 60 days.

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

1. Taxpayer A, as surviving spouse and sole beneficiary of Decedent B's Estate, will be treated for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA D;
2. IRA D will not be treated as an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to Taxpayer A;
3. Taxpayer A is eligible to roll over the proceeds from IRA D to an individual retirement account set up and maintained in her own name, pursuant to section 408(d)(3)(A)(i) of the Code; as long as the rollover occurs no later than the 60th day after the proceeds are received by Taxpayer A in her capacity as sole Executor and sole beneficiary of Decedent B's Estate;
4. Taxpayer A will not be required to include in gross income for federal income tax purposes, for the year in which the distribution of IRA D is made, any portion of the proceeds distributed from IRA D which are timely rolled over to an IRA set up and maintained in Taxpayer A's name.

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 ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (ID #) at () - . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: