



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201430021

MAY 01 2014

Uniform Issue List: 408.08-00, 4973.02-00

SE:T:EP:RA:T2

Legend:

Decedent	=	***
Trust	=	***
Child A	=	***
Child B	=	***
Trustee	=	***
Investment Advisor	=	***
Broker-Dealer	=	***
Custodian	=	***
IRA X	=	***
Annuity A	=	***
Annuity B	=	***
Annuity C	=	***
Annuity D	=	***

State = * * *

IRA Y = * * *

Amount A = * * *

Amount B = * * *

Amount C = * * *

Amount D = * * *

Date 1 = * * *

Date 2 = * * *

Date 3 = * * *

Date 4 = * * *

Dear ,

This is in response to your request dated August 31, 2011, and supplemented on December 7, 2012, April 4, 2013, August 12, 2013, August 14, 2013, and August 26, 2013, submitted by your authorized representative on your behalf, in which you request a letter ruling under sections 408(d) and 4973 of the Internal Revenue Code (the "Code").

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

Decedent was the owner of IRA X, which contained as investments Annuity A, Annuity B, Annuity C, and Annuity D. Prior to her death, Decedent established the Trust on Date 1. Decedent then died on Date 2. The Trust was the named beneficiary of Annuities A, B, C, and D.

The beneficiaries of the Trust after Decedent's death are Decedent's children, Child A and Child B. Upon Decedent's death, Trustee, a financial institution, became the trustee of the Trust. The Trust is administered under the laws of State. Investment Advisor as an employee of Broker-Dealer, was appointed as the investment advisor to the Trust. Broker-Dealer is a broker-dealer firm.

After Decedent's death, Investment Advisor intended to transfer the death benefits of Annuities A, B, C, and D via a trustee-to-trustee transfer to IRA Y, an IRA set up for the Trust with Broker-Dealer that is held by Custodian, a financial institution. Investment Advisor's assistant filled out death benefit claims forms for Annuities A, B, C, and D, and on Date 3, Trustee signed the claims forms. However, instead of requesting a trustee-to-trustee transfer, the forms requested that the checks be payable to the Trust and sent to Broker-Dealer.

In the month of Date 4, Amounts A, B, C, and D were sent by check payable to the Trust from Annuities A, B, C, and D, respectively, and mailed to Broker-Dealer who gave the checks to Custodian to deposit into IRA Y. You have represented that IRA Y meets the requirements of Section 408 of the Code to be an IRA. Neither the Trustee nor the Investment Advisor received the checks; instead they were transferred by Broker-Dealer directly to Custodian for deposit in IRA Y.

Based on the facts and representations, you request the following rulings:

- (1) that Amounts A, B, C, and D were properly transferred to IRA Y in the month of Date 4;
- (2) that no amount was paid or distributed out of the IRA X under section 408 of the Code as a result of the transfers of Amounts A, B, C, and D to IRA Y;
- (3) that no amount is includable in gross income by the Trust as a result of the transfers of Amounts A, B, C, and D; and
- (4) that Amounts A, B, C, and D placed in IRA Y in the month of Date 4 do not represent excess contributions subject to penalty under section 4973 of the Code.

With respect to your first, second, and third ruling requests, Section 408(d)(1) of the Code 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 of the Code.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee, or distributee as those terms are used in section 408(d) of the Code and does not constitute a rollover contribution because such funds were not within the direct control and use of the participant. Accordingly, such a transfer does not result in a payment or distribution that is includible in the gross income of the participant.

The information presented and documentation submitted by Taxpayer indicates that the Taxpayer intended to make a trustee-to-trustee transfer to IRA Y and that Amounts A, B, C, and D were actually transferred from Annuities A, B, C, and D to Custodian (via

Broker-Dealer) and were not paid or distributed to Taxpayer. In the absence of payment or distribution, the transfer is not a rollover contribution because the funds were never within the direct control and use of the Trust, Trustee, or Investment Advisor.

With respect to your fourth ruling request, Section 4973 of the Code imposes an excise tax equal to 6 percent of the amount of any excess contribution to an IRA. This 6 percent tax applies for each taxable year of the IRA owner during which such excess contributions remain in such IRA, determined as of the end of the taxable year. An excess contribution under section 4973 is defined as a contribution in excess of the maximum amount that may be contributed to an IRA.

Under the circumstances presented in this case, the Service hereby determines:

- (1) that Amounts A, B, C, and D were properly transferred to IRA Y in the month of Date 4, pursuant to trustee-to-trustee transfers pursuant to Revenue Ruling 78-406;
- (2) that, as trustee-to-trustee transfers, no amounts were paid or distributed out of the IRA X under section 408 of the Code as a result of the transfers of Amounts A, B, C, and D to IRA Y;
- (3) that, accordingly, no amounts are includable in gross income by the Trust as a result of the transfers of Amounts A, B, C, and D to IRA Y; and
- (4) that, since Amounts A, B, C, and D were transferred to IRA Y via trustee-to-trustee transfers, they do not represent contributions subject to penalty for excess contributions under section 4973 of the Code.

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.

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

If you wish to inquire about this ruling, please contact ***** (***) ***.
****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: ***