

200703035



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 27 2006

UICS: 408.00-00
408.03-00
408.06-00

LEGEND:

Decedent:

Spouse

Employee:

Attorney:

Trust T:

IRA X:

IRA Y:

Account Z:

Company M:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

200703035

Month 1:

Month 2:

Court:

County:

State W:

Dear :

This is in response to the , letter, as supplemented by correspondence dated , and , in which your authorized representative, on your behalf, requests several letter rulings under section 408(d) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent, whose date of birth was Date 1, 1935, died on Date 2, 2005, a resident of State W, not having attained age 70 ½. Decedent was survived by his wife, Spouse. Spouse was alive as of the date of this ruling request. Spouse was 71 years of age as of the date of this ruling request.

At his death, Decedent maintained an individual retirement account, IRA X, with Company M. The value of IRA X at the death of Decedent was approximately Amount 1.

On Date 3, 2002, Decedent signed his Last Will and Testament. Article II of Decedent's Last Will and Testament names Spouse as the sole Executrix of his Last Will and Testament. Decedent's Will has been admitted to probate by Court, County, State W. On Date 4, 2002, Decedent named his estate as the beneficiary of his IRA X.

Article IV of Decedent's Last Will and Testament created Trust T. Article VI of Decedent's Last Will and Testament names Spouse as the sole residuary beneficiary of his estate.

It has been represented on your behalf that the laws of State W give a personal representative or executrix of an estate the authority to allocate estate assets under the terms of a decedent's will as she sees fit. Consistent with that authority, Spouse, as executrix of decedent's will, allocated assets, other than IRA X, to Trust T created under Article IV of Decedent's Will. Thus, IRA X was allocated as part of Decedent's residuary estate under Article VI of his will.

It has been represented that Spouse has maintained IRA Y in her name with Company M. In this regard, subsequent to the death of Decedent, Spouse discussed with Employee, as employee of Company M, the transfer of at least part of IRA X into IRA Y. As a result of these

discussions, Spouse understood that such a transfer would require initially transferring IRA X into Account Z, a non-IRA account maintained with Company M, and then transferring the IRA X proceeds from Account Z into IRA Y. On or about Date 5, 2005, Spouse signed a Company M IRA/SEP Distribution Request pursuant to which Amount 2, slightly less than ½ of IRA X, would be transferred into Account Z. In signing the form, Spouse believed that the amounts in Account Z would later be transferred into IRA Y, and that the transfer into IRA Y would be completed within 60 days of the date on which amounts had been distributed from Decedent's IRA X.

The Service notes that an affidavit signed by Employee accompanied this ruling request. In his affidavit, in relevant part, Employee notes he discussed with Spouse the two-step process pursuant to which Amount 2 would initially be transferred into Account Z and subsequently transferred into Spouse's IRA Y. Employee also avers that he attempted to accomplish the transfer from Account Z into IRA Y but, contrary to what he had advised Spouse, Company M would not complete the transfer without either a letter ruling from the Service or a Court Order.

In either Month 1 or Month 2, 2006, Spouse received a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. which showed a taxable distribution in the amount of Amount 2 from IRA X in calendar year 2005. Spouse immediately sought legal advice from Attorney. This request for letter ruling followed soon thereafter.

It has been represented that the amounts transferred into Account Z during calendar year 2005 remain in said account.

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

1. That IRA X does not constitute an "inherited IRA", within the meaning of Code section 408(d)(3)(C);
2. That Spouse was eligible to either roll over, or transfer, by means of a trustee-to-trustee transfer, the IRA X account balance, which includes Amount 2 distributed from IRA X during calendar year 2005, into either IRA Y or another IRA set up and maintained in her name; and
3. That the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution from IRA X of Amount 2, because the failure to waive such requirement would be against equity or good conscience.

With respect to your 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.

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)).

Section 408(d)(3)(B) of the Code 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 1-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 gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that paragraph (d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, in short, under circumstances that conform with the requirements of Code section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner, will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

With specific respect to your first two ruling requests, on April 17, 2002, Final Income Tax Regulations ("publications") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the 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 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, as noted above, the IRA X account balance remaining at Decedent A's death was payable to Decedent's estate and passed under Article VI of Decedent's Last Will and Testament absolutely and free of trust to Spouse as the sole residuary beneficiary under said will.

With respect to the first and second ruling requests, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., an estate or trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, Decedent's interest in IRA X passed under his will directly to Spouse as sole residuary beneficiary under said will. The authority to allocate said IRA X to Decedent's residuary estate lay with Spouse. Under this set of circumstances, no third party could have prevented Spouse from receiving said IRA X and from rolling over, or transferring,

by means of a trustee-to-trustee transfer, the full, or any portion of the, amount standing in IRA X into either IRA Y or another IRA set up and maintained in Spouse's name.

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

1. That IRA X does not constitute an "inherited IRA", within the meaning of Code section 408(d)(3)(C); and
2. That Spouse was eligible to either roll over, or transfer, by means of a trustee-to-trustee transfer, the IRA X balance remaining at Decedent's death, which includes Amount 2 distributed from IRA X during calendar year 2005, into either IRA Y or another IRA set up and maintained in her name.

With respect to your third ruling request, as noted above, Amount 2 was not rolled into, or transferred, as a trustee-to-trustee transfer, into another IRA within 60 days of the date it was distributed from IRA X. However, the facts in this case indicate that Spouse requested the distribution of Amount 2 from IRA X relying on the advice of Employee of Company M that it would initially be placed into Account Z, an account authorized to receive said Amount 2 on behalf of Decedent's estate, and then transferred into IRA Y, an IRA set up and maintained in the name of Spouse. Amount 2 was placed into Account W but, contrary to what Spouse believed would transpire, Company M failed to complete the second step of the process and failed to transfer said Amount 2 into IRA Y as Spouse intended.

Therefore, based on the above facts, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA X. Thus, you are granted a period of 60 days from the issuance of this ruling letter to accomplish the rollover of Amount 2 into either IRA Y or another IRA set up and maintained in the name of Spouse. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into said IRA will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

As noted above, Spouse had attained age 70 ½ as of the date of this ruling request. In this regard, this ruling does not authorize the rollover of amounts that are required to be distributed by sections 401(a)(9) and 408(a)(6) of the Code with respect to calendar year 2006.

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.