



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200720024

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**Legend:**

Taxpayer A =

Taxpayer B =

Institution X =

IRA M =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This is in response to your request dated June 27, 2006, supplemented by correspondence dated August 21, 2006, October 23, 2006, January 24, 2007, February 6, 2007, and February 12, 2007, in which your authorized representative requested, on your behalf, a letter ruling under section 408(d) 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.

Taxpayer A, whose date of birth was Date 1, 1944, died on Date 2, 2004, not having attained age 70 1/2. Taxpayer A was survived by his wife, Taxpayer B. At the time of this ruling request, Taxpayer B also has not attained age 70 1/2.

At the time of his death, Taxpayer A maintained an individual retirement annuity, IRA M, with Institution X. When opening IRA M, on Date 3, 2003, Taxpayer A did not designate a beneficiary for IRA M. As a result, his estate is the beneficiary thereof.

On Date 4, 1972, Taxpayer A signed his Last Will and Testament. Item II of Taxpayer A's Last Will and Testament names Taxpayer B as sole beneficiary of Taxpayer A's property. Item IV of Taxpayer A's Last Will and Testament names Taxpayer B as the sole Executrix of his estate.

As sole beneficiary of Taxpayer A's Last Will and Testament, Taxpayer B intends to receive a full distribution of all amounts payable under IRA M and roll over said distribution into an individual retirement account ("IRA") set up and maintained in her name with Institution X. Said rollover will occur no later than the 60<sup>th</sup> day following the day on which Taxpayer B receives the distribution, and the entire transaction will be completed no later than December 31, 2007.

It has been represented that Taxpayer B has not received any distribution from Taxpayer A's IRA M since the death of Taxpayer A.

Based on the facts and representations, you request a ruling that Taxpayer B is eligible to roll over the proceeds of IRA M into an IRA set up and maintained in her name.

With respect to your ruling request, 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 60<sup>th</sup> 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 60<sup>th</sup> 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

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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 the rollover provisions of section 408(d) do not apply to any amount 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.

On April 17, 2002, Final Income Tax Regulations ("regulations") 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 either a trust or estate is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust or estate.

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, since Taxpayer A did not designate a beneficiary for IRA M, IRA M is payable to Taxpayer A's estate and passed under Article II of Taxpayer A's Last Will and Testament, absolutely, to Taxpayer B as the sole beneficiary under said will.

With respect to the ruling request in this case, 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, a 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, Taxpayer A's interest in IRA M passed under his will directly to Taxpayer B as sole beneficiary under said will. Furthermore, Taxpayer B is the sole Executrix of Taxpayer A's estate. Under this set of circumstances, no third party can prevent Taxpayer B from receiving IRA M and from rolling over, or transferring, by means of a trustee-to-trustee transfer, IRA M into another IRA set up and maintained in Taxpayer B's name.

Under this set of circumstances, we will not apply the general rule set forth above. Therefore, we conclude with respect to your ruling request that Taxpayer B is eligible to either roll over, or transfer, by means of a trustee-to-trustee transfer, IRA M into another IRA set up and maintained in her 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.

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 \_\_\_\_\_, Esq.  
(ID # \_\_\_\_\_) at ( \_\_\_\_\_ ) Please address all correspondence to  
SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose