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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 23 2007

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Individual A =  
Individual B =  
State C =  
Trust A =  
Trust Agreement A =  
Individual C =  
IRA X =

Dear :

This is in response to correspondence dated October 23, 2006, as supplemented by correspondence dated May 8, August 20, and September 26, 2007, submitted on your behalf by your authorized representative, in which you requested a ruling under section 408(d) of the Internal Revenue Code (Code).

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

Individual A was born on September 6, and died on February 28, , at age 67. Individual B was married to Individual A, and both resided in State C, on the date of his death. On the date of his death, Individual A maintained an Individual Retirement Arrangement (IRA) from which no distributions had been made. Individual A had not named a beneficiary for this IRA and under State C law his estate became the beneficiary.

Individual A died testate and under his Last Will and Testament (Will) left the residue of his estate, following dispositive provisions for the real and personal tangible property in his estate, to Trust A. Trust A was established by and is governed by the terms of Trust

Agreement A. Trust A is a grantor trust and is irrevocable. The residue of his estate includes his IRA.

Article Four of Trust Agreement A provides for disposition of the Trust A assets following the death of Individual A. Paragraph 4.1 of Trust Agreement A provides for the distribution of specific cash amounts. Paragraph 4.2 provides for division of the remainder of the Trust A estate into four separate sub-trusts to be established, including a Marital Trust and a Non-Marital Trust. Under Paragraph 4.3(a) of Trust Agreement A, Individual B is entitled to the entire principal and income of the Marital Trust during her lifetime. She has, under State C law and the express terms of Trust Agreement A, the unfettered right to withdraw all or a portion of the assets of the Marital Trust and request payment thereof to herself as beneficiary, or for her benefit, without regard to the interests of any remainder beneficiary. Paragraph 4.4(a) of Trust Agreement A provides that in the event the assets of the Marital Trust are exhausted, Individual B may benefit from principal and income distributions from the Non-Marital Trust, subject to normal restrictive standards.

Individual A named himself as trustee of Trust A and provided that upon his death, Individual B and Individual C should serve as successor co-trustees. As co-trustees of Trust A, Individuals B and C propose to take certain actions.

First, pursuant to Article Five of Trust Agreement A, by means of a trustee-to-trustee transfer, the Trust A co-trustees will transfer an amount of the assets of Individual A's IRA to a separate IRA, to be called IRA X. IRA X will be set up and maintained in the name of Individual A. IRA X will include an allocation of all post-death investment gains and losses.

Next, pursuant to Article Four, paragraph 4.2 of Trust Agreement A, Individuals B and C will create four separate sub-trusts, including a Marital Trust. In accordance with the provisions of Trust Agreement A, the Marital Trust will be the nominal beneficiary of IRA X. Individuals B and C will then distribute to Individual B the entire principal of the Marital Trust pursuant to the personal request of Individual B, as permitted in paragraph 4.3(a) of Trust Agreement A. It is anticipated that the assets of the Marital Trust will consist of Taxpayer B's rights to IRA X, as beneficiary of the Marital Trust created under the provisions of Trust A, plus such other assets as will fully fund the Marital Trust. Individual B and C will then, pursuant to Article 7 of Trust Agreement A, terminate the Marital Trust. Individual B will then roll over the amounts held in IRA X into an IRA established as her own IRA rather than as a beneficiary IRA. This will take place no later than 60 days following Individual B's receipt of the distribution of IRA X.

Based on the facts and representations, the following rulings were requested:

1. That portion of Individual A's IRA which will be transferred, by means of a trustee-to-trustee transfer, into a separate IRA entitled IRA X, will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Individual A's surviving spouse, Individual B.

2. Individual B will not be required to include in her gross income for federal tax purposes the undistributed assets of IRA X, that will be created by means of a trustee-to-trustee transfer from Individual A's IRA to IRA X.

3. Individual B will be entitled to elect to receive a total distribution from IRA X and roll over this distribution into her own IRA, as long as the rollover is accomplished not later than the 60th day after the date on which Individual B receives the distribution.

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)(C)(i) of the Code provides, in summary, that the rollover rules of 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, 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.

The Preamble to the Final Income Tax Regulations promulgated under Code section 401(a)(9) (see 67 Federal Register 18988 (April 17, 2002)) (Regulations) provides, in relevant part, that a surviving spouse who actually receives a distribution from a deceased spouse's 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 a trust.

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 Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Revenue Ruling 78-406 is applicable if the trustee-to-trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary. The beneficiary accomplishing such a post-death trustee-to-trustee transfer need not be the surviving spouse of a deceased IRA holder.

In this case, although Individual A had not named a beneficiary for his IRA, under State C law his estate became the beneficiary. Pursuant to his Will, Individual A left the residue of his estate, including his IRA, to Trust A. Individual B is a co-trustee of Trust A and Individual A's surviving spouse. As co-trustee, Individual B will transfer, by means of a trustee-to-trustee transfer, an amount of the assets in Individual A's IRA to a separate IRA, to be called IRA X. IRA X will be set up and maintained in the name of Individual A. In accordance with the provisions of Trust Agreement A, the Marital Trust, a sub-trust to be established under paragraph 4.2 of Trust Agreement A, will be the nominal beneficiary of IRA X. As surviving spouse, Individual B is the sole beneficiary of the Marital Trust. Pursuant to paragraph 4.3(a) of Trust Agreement A and the request of Individual B, the Trust A co-trustees will then distribute to Individual B the entire principal of the Marital Trust, including amounts in IRA X. Individual B will then roll over the amounts distributed from IRA X into an IRA established as her own IRA no later than 60 days following her receipt of the distribution from IRA X.

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, shall not be eligible to roll over the distributed IRA proceeds into her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

In this case, the surviving spouse, Individual B, is not the sole trustee of Individual A's trust, Trust A. Pursuant to the Preamble to the Final Regulations however, if Individual B, as Individual A's surviving spouse, actually receives a distribution from an IRA set up and maintained in the name of Individual A, she is permitted to roll over that distribution into her own IRA even though she is not the sole beneficiary of Individual A's IRA as long as the rollover is accomplished within the requisite 60-day period. This rollover may be accomplished even though the IRA assets pass through a trust.

Additionally, a trustee-to-trustee transfer, as described in Revenue Ruling 78-406, does not constitute a distribution or payment as those terms are defined for purposes of section 408(d) of the Code. Furthermore, a trustee-to-trustee transfer from one IRA to another IRA may be accomplished after the date of death of an IRA owner by a

beneficiary of said IRA owner as long as the transferee IRA remains in the name of the decedent.

In this case, Trust A was the beneficiary of Individual A's IRA pursuant to State C law and Individual A's Will. Trust A was established by Individual A, was valid under the laws of State C, and became irrevocable at the death of Individual A.

Individual B, and her Trust A co-trustee, intend to accomplish a trustee-to-trustee transfer of a portion of the IRA held by Individual A at his death into IRA X, another IRA maintained in the name of Individual A. Individual B will then request payment of the amounts held in IRA X as beneficiary of the Marital Trust created under the terms of Trust Agreement A, which Marital Trust is the beneficiary of IRA X. Upon receipt of the IRA X distribution, Individual B will then roll over the IRA X distribution into an IRA set up and maintained in her name. Said rollover will be made within the time frame stated in Code section 408(d)(3)(A)(i). Based on the above, the Service will treat Individual B as a surviving spouse who is eligible to roll over her above-described IRA X interest into an IRA set up and maintained in her name.

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

1. That portion of Individual A's IRA which will be transferred, by means of a trustee-to-trustee transfer, into a separate IRA entitled IRA X, will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Individual A's surviving spouse, Individual B.
2. Individual B will not be required to include in her gross income for federal tax purposes the undistributed assets of IRA X, that will be created by means of a trustee-to-trustee transfer from Individual A's IRA to IRA X.
3. Individual B will be entitled to elect to receive a total distribution from IRA X and roll over this distribution into her own IRA, as long as the rollover is accomplished not later than the 60th day after the date on which Individual B receives the distribution.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) (if any).

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 assumes that Individual A's IRA is and was qualified under section 408 of the Code at all times relevant thereto. It also assumes that IRA X and any rollover IRA established by Individual B will also meet the requirements of section 408 at all times relevant 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.

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Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact \_\_\_\_\_, I.D. # - \_\_\_\_\_, at ( ) - \_\_\_\_\_. Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

  
\_\_\_\_\_, Manager  
Employee Plans Technical Group

**Enclosures:**

Deleted copy of letter ruling  
Notice of Intention to Disclose