



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

SEP 15 2009

SET:EP:RA:T3

Section 408 -- Individual Retirement Accounts

408.00-00 Individual Retirement Accounts  
408.01-00 Exclusive Benefit of Individual or Beneficiary  
408.03-00 Rollover Contributions  
408.06-00 IRA Distributions

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Legend:

Surviving Spouse = \*\*\*

Decedent = \*\*\*

IRA X = \*\*\*

Custodian = \*\*\*

Amount = \*\*\*

Trust T = \*\*\*

Agreement T = \*\*\*

State = \*\*\*

Date 1 = \*\*\*

Date 2 = \*\*\*

Date 3 = \*\*\*

Date 4 = \*\*\*

Date 5 = \*\*\*

Dear \*\*\*:

This is in response to your request for a private letter ruling, submitted by your authorized representative dated \*\*\*, as supplemented by correspondence dated \*\*\*, \*\*\*, \*\*\* and \*\*\*, concerning the proper treatment of a distribution from Decedent's individual retirement account (IRA X) under section 408(d)(3) of the Internal Revenue Code ("the Code").

Your authorized representative has submitted the following facts and representations:

Decedent was born on Date 1 and died on Date 2 at age 66. Decedent was a resident of State at the time of his death. Decedent was survived by his spouse, Surviving Spouse, whose date of birth is Date 3.

Prior to his death, on Date 4, Decedent executed Agreement T which created Trust T. Initially, Decedent was the trustee of Trust T. Upon Decedent's death, Surviving Spouse and Custodian became co-trustees of Trust T under Article VII.C and D of Trust T.

At the time of his death, Decedent maintained IRA X with Custodian. On Date 4, Decedent had amended IRA X to provide that Trust T was the beneficiary of IRA X. On Date 5, the value of IRA X was Amount.

At the time of his death, Decedent had not yet reached his "required beginning date" under Code section 401(a)(9). At all times subsequent to Decedent's death, IRA X has been maintained in Decedent's name and all required minimum distributions under Code section 401(a)(9) have been distributed from IRA X.

The Date 4 amendment to IRA X provides that Surviving Spouse has the right to income from IRA X through Trust T. The amendment also gives Surviving Spouse the right to withdraw principal from IRA X.

Article I of Trust T, in relevant part, gives the Trustee(s) of Trust T the right to request that Trust T receive payment of amounts held in an individual retirement account.

Subparagraph A.1 of Article III of Trust T directs the trustee to pay the income received by Trust T from IRA X to Surviving Spouse, at least annually, for life.

Subparagraph A.3 of Article III of Trust T provides that Surviving Spouse has the right to withdraw such sums from the principal of Trust T that Surviving Spouse may desire.

Pursuant to the above-referenced Trust T provisions, Surviving Spouse intends to request that the trustees of Trust T request a full distribution of the IRA X assets be paid to Trust T. Surviving Spouse will then request the IRA X proceeds be paid to her as the beneficiary of Trust T. Within 60 days of the date on which the IRA X proceeds are paid to Trust T, Surviving Spouse will contribute said IRA X proceeds (less any calendar year 2009 required distribution) into an IRA set up and maintained in her name.

Based on the above facts and representations, you, through your authorized representative, request rulings that:

1. IRA X will not be treated as an inherited IRA within the meaning of Code section 408(d)(3) with respect to Surviving Spouse;
2. Surviving Spouse is eligible to rollover or transfer (by means of a trustee-to-trustee transfer) the funds in IRA X into an IRA established in Surviving Spouse's own name; and
3. Surviving Spouse will not be required to include in gross income for federal income tax purposes for the year in which the amounts are distributed from IRA X and the year in which the above-referenced rollover is made (if different) any portion of the amounts distributed from IRA X and contributed to the individual retirement account set up and maintained in Surviving Spouse's name, provided that the rollover of such distribution occurs no later than the 60th day from the date on which the IRA X proceeds are distributed from IRA X to Trust T.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides the rules with regard to the tax treatment of IRA rollovers under the Code.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3) provides that code section 408(d)(1) 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 date 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 Code section 408(d)(3)).

Code section 408(d)(3)(C)(i) provides, in pertinent part, 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. Therefore, the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own or roll them over into her own IRA.

Code section 408(d)(3)(E) provides, generally, that Code section 408(d) does not apply to any amount required to be distributed pursuant to Code section 408(a)(6).

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 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 surviving 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 and/or an estate.

In this case, the IRA X account balance remaining at Decedent's death is payable to Trust T. Surviving Spouse is the co-trustee of Trust T and the sole beneficiary of Trust T with the right, under Subparagraph A.1 of Trust T, to receive the net income of Trust T, including IRA X income, at least annually during her life. Surviving Spouse also has the right, under Subparagraph A.3 of Trust T, to withdraw all or as much of the principal of Trust T as she desires, in her sole discretion.

We note that under the facts stated above, Surviving Spouse has an unlimited right to withdraw amounts from IRA X through Trust T. As beneficiary of Trust T, Surviving Spouse has the right under the terms of Trust T to receive the income of Trust T and the income of IRA X through Trust T, and also to request and receive any and all of the principal of Trust T, including IRA X.

Under this set of facts, we believe it is appropriate to treat Surviving Spouse as the "payee" or "distributee" of IRA X for purposes of Code sections 408(d) even though IRA X must originally pass through Trust T. As such, she is eligible to roll over or transfer, by means of a trustee-to-trustee transfer, IRA X or any portion thereof into an IRA established in her name.

Thus, with respect to your ruling requests, we conclude that:

1. IRA X will not be treated as an inherited IRA within the meaning of Code section 408(d)(3) with respect to Surviving Spouse;
2. Surviving Spouse is eligible to rollover or transfer (by means of a trustee-to-trustee transfer) the funds in IRA X into an IRA established in Surviving Spouse's own name; and
3. Surviving Spouse will not be required to include in gross income for federal income tax purposes for the year in which the amounts are distributed from IRA X and the year in which the above-referenced rollover is made (if different) any portion of the amounts distributed from IRA X and contributed to the individual retirement account set up and maintained in Surviving Spouse's name, provided that the rollover of such distribution occurs no later than the 60th day from the date on which the IRA X proceeds are distributed from IRA X to Trust T and provided further that such distribution does not include any amount required to be distributed pursuant to Code section 408(a)(6).

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by Surviving Spouse will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Surviving Spouse's rollover of the IRA X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

Note: this letter ruling does not authorize Surviving Spouse to contribute amounts required to be distributed under Code section 401(a)(9), applicable to IRAs pursuant to Code section 408(a)(6) with respect to calendar years beginning with the calendar year following the calendar year of Decedent's death and ending with the calendar year of rollover into her IRA (if any).


This ruling 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 by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

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.

If you have any questions, please contact \*\*\*, ID \*\*\*, at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

cc: \*\*\*  
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Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose