



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

201150037

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

SEP 23 2011

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**LEGEND:**

Taxpayer A: \*\*\*\*\*

Taxpayer B: \*\*\*\*\*

Taxpayer C: \*\*\*\*\*

IRA X: \*\*\*\*\*

Company M: \*\*\*\*\*

Agreement A: \*\*\*\*\*

Date 1: \*\*\*\*\*

Date 2: \*\*\*\*\*

Date 3: \*\*\*\*\*

Date 4: \*\*\*\*\*

Date 5: \*\*\*\*\*

Court T: \*\*\*\*\*

County U: \*\*\*\*\*

State V: \*\*\*\*\*

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Amount U:       \$\*\*\*\*\*

Dear \*\*\*\*\*.

This is in response to the \*\*\*\*\* , request for letter ruling submitted on your behalf by your authorized representative, as supplemented by correspondence dated \*\*\*\*\* , \*\*\*\*\* , and \*\*\*\*\* , in which you request a series of letter rulings under various subsections of section 408 and section 4975 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

**FACTS:**

Taxpayer A, whose date of birth was Date 1, \*\*\*\*, married Taxpayer B on Date 2, \*\*\*\*. Pursuant to Article 4a of a Judgment of Dissolution ordered by Court T, County U, State V, dated Date 5, \*\*\*\*, Taxpayer A's marriage to Taxpayer B was dissolved effective Date 3, \*\*\*\*.

Taxpayer B is presently the owner of IRA X with Company M as custodian. It has been represented on your behalf that IRA X is an individual retirement arrangement ("IRA") described in section 408 of the Internal Revenue Code.

On Date 4, \*\*\*\*, Taxpayers A and B entered into Agreement A. Section 6.1 of Agreement A provides that Taxpayer A is to receive one-half of Taxpayer B's IRA X. Article 4n(1) of the above-referenced Date 5, \*\*\*\* Judgment of Dissolution provides that Spousal Support is ordered as set forth in the Date 4, \*\*\*\* Agreement A. Thus, Court T has ordered Taxpayer B to pay Taxpayer A one-half of his IRA X.

Pursuant to the above-referenced Agreement A and Judgment of Dissolution, Taxpayer A proposes to have one-half of IRA X, approximately Amount U, transferred, by means of a trustee-to-trustee transfer, into an individual retirement account set up and maintained in the name of Taxpayer A. It is represented that said transfer is intended to comply with the requirements of section 408(d)(6) of the Code.

Taxpayer A has been diagnosed with bipolar disorder. To protect her assets from imprudent use, Taxpayer A created a set of instructions or "directions" for the custodian of the transferee IRA to be set up and maintained in her name, containing the rollover funds from IRA X.

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Pursuant to the proposed directions received by the Internal Revenue Service ("Service") \*\*\*\*\* , the directions to be placed on the IRA custodian read:

**1. Deposit to Personal Bank or Investment Account.**

As owner of the above identified Individual Retirement Account (the "IRA"), I hereby direct that all distributions made from the IRA be deposited electronically into the bank or investment account in my name (Taxpayer A) specified in the attachment to these directions.

**2. Distributions.**

(a) Timing of Required Minimum Distributions. The required minimum distributions ("RMDs") from the IRA shall be made in equal monthly installments, deposited to the above-identified bank or investment account, on or about the 10<sup>th</sup> day of each calendar month, subject to the provisions of Internal Revenue Code Section 408(a)(6), relating to such distributions.

(b) Distributions in Excess of Required Minimum Distributions. I further direct that any distributions from the IRA in excess of the required minimum distributions shall only be made upon written request bearing my signature. Any such distribution shall be deposited into the above-described bank or investment account as soon as reasonably practicable, but not sooner than 30 days, after your receipt of the written request.

(c) Exception for Medical Emergency. Notwithstanding the provision of subsection (b), above, in the event of a medical emergency (certified by a physician duly licensed to practice medicine in State V) because of which I cannot execute the written request described in subsection (b), I further direct that distributions in excess of the required minimum distributions be made from the IRA upon the express written instruction of my attorney or other personal representative. Any distribution described in this subsection (c) shall be solely for purposes of meeting expenses directly related to the medical emergency.

**3. Notification to Attorney or Other Personal Representative.**

I further direct that, in the event of any distribution other than the equal monthly installments of the Required Minimum Distributions, as described in Section 2(a) above, you notify my attorney or other personal representative in writing or by email of such distribution no later than 21 days before the day on which the distribution is made.

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**4. Identification of Attorney or Other Personal Representative.**

As of the date of these directions, my attorney is Taxpayer C. Her mail address and email address are set forth in the attachment to these instructions. If, at any time during my lifetime, you are duly notified in writing that a successor attorney or other personal representative has been engaged, such successor attorney or other personal representative shall be sent the notifications described in Section 3, above, and Section 6, below.

**5. Directions Apply to Successor IRA or Successor Custodian.**

These directions shall apply to any successor individual retirement account (or similar vehicle) to which the assets of the IRA might be transferred (by rollover or otherwise) at any time during my lifetime, and to any successor custodian of the IRA (or similar vehicle).

**6. Change of Directions.**

(a) Change to be Made in Writing. These directions may be changed at any time by me, but only in a writing signed by me.

(b) Effective Date of Change of Directions. Any change of these directions, including, but not limited to, a change of the bank or investment account into which the distributions from the IRA shall be deposited, a change in the timing or amount of any distributions, and/or a change in the notification provisions of these directions, shall take effect no sooner than 30 days following your receipt of the writing making such change.

(c) Notification of Change. In the event of any change of these directions, I direct that you notify my attorney or other personal representative in writing or by email of such change and of the effective date of such change. Such notification shall be sent no later than 21 days before the effective date of such change.

(d) Directions Not to Apply after Death. These directions shall not apply after my death.

Taxpayer A will issue the above directions to the custodian of the transferee IRA to be set up and maintained in her name.

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Based on the above facts and representations, you, through your authorized representative, request the following letter rulings with respect to the above directions to be placed on the custodian of Taxpayer A's transferee IRA.

**REQUESTED LETTER RULINGS:**

1. That the individual retirement account set up and maintained in the name of Taxpayer A will be for her exclusive benefit;
2. That the above transaction will not be considered a prohibited transaction within the meaning of section 4975(c) of the Code;
3. That the above transaction will not give rise to a distribution from Taxpayer A's transferee IRA under section 408(e)(2)(B) of the Code;
4. That the above transaction will not give rise to an assignment by Taxpayer A of any or all of her transferee IRA described above; and
5. That the above transaction will not result in Taxpayer A's transferee IRA losing its exemption under section 408(e)(2)(A) of the Code.

**LAW:**

With respect to your ruling requests, section 408(a) of the Code, in pertinent part, provides that the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the requirements found in subsections (1) through (6).

Section 408(a)(4) of the Code provides that the interest of an individual in his/her account must be nonforfeitable.

Section 1.408-4(a)(2) of the Income Tax Regulations ("Regulations") provides, in relevant part, that "...For purposes of this section, an assignment of an individual's rights under an individual retirement account or an individual retirement annuity shall, except as provided in section 1.408-4(g) (relating to transfer incident to divorce) be deemed a distribution to such individual from such account or annuity of the amount assigned."

Section 408(d)(1) of the Code 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.

Section 408(d)(6) of the Code provides that the transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation agreement described in

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subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer with respect to such individual, and such interest at the time of transfer shall be treated as an IRA of such spouse and not of such individual. Thereafter, such account for purposes of this subtitle (Subtitle A) is to be treated as maintained for the benefit of such spouse.

Section 71(b)(2)(A) of the Code provides, in general, that a "divorce or separation instrument" means a decree of divorce or separate maintenance or a written instrument incident to such a decree.

Section 408(e)(1) of the Code provides, in relevant part, that an IRA is exempt from tax under this subtitle (Subtitle A) unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3).

Section 408(e)(2)(A) of the Code provides, in summary, that if during any taxable year of an individual for whose benefit an IRA is established, that individual or his beneficiary engages in any transaction prohibited by Code section 4975 with respect to such IRA, then such IRA will cease to be an IRA as of the first day of such taxable year.

Section 408(e)(2)(B) of the Code provides, in summary, that in any case in which an IRA ceases to be an IRA pursuant to subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

Section 4975(c) of the Code lists transactions that constitute prohibited transactions. Section 4975(c)(1)(D) of the Code provides that a prohibited transaction includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan (IRA).

Section 4975(e)(1)(B) of the Code provides that for purposes of section 4975, the term "plan" includes an individual retirement account described in section 408(a).

Section 4975(e)(2)(G) of the Code defines "disqualified person" to include a trust of which 50% or more of the beneficial interest is held or owned directly or indirectly by persons described in subparagraph (A), (B), (C), (D), or (E) of section 4975(e)(2).

Section 4975(d)(9) of the Code provides that the prohibitions provided in subsection (c) shall not apply to receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as

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the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries.

Section 401(a)(9)(A)(ii) of the Code provides that a section 401(a) trust must provide that an employee's plan interest may be distributed beginning not later than his required beginning date over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee or the life expectancy of the employee and his designated beneficiary).

Section 408(a)(6) of the Code provides that the rules of section 401(a)(9) of the Code shall apply to individual retirement accounts.

**ANALYSIS:**

In this case, the Service notes that the essence of the transaction described above is that Taxpayer A, Taxpayer B's former spouse, became entitled to receive one-half of Taxpayer B's IRA X because of Agreement A which became part of the Date 5, \*\*\*\* Judgment of Dissolution which terminated the marriage of Taxpayers A and B. Taxpayer A now proposes to have her one-half of IRA X transferred into an IRA set up and maintained in her name, with distributions from her transferee IRA subject to the directions to be placed on the custodian of her IRA.

Initially, the Service notes that Taxpayer A is entitled to receive one-half of Taxpayer B's IRA X because of the two parties having entered into Agreement A, and that Agreement A became part of the above-referenced Date 5, \*\*\*\* Dissolution Agreement. Thus, Taxpayer A's right to transfer one-half of IRA X stems from Court T's dissolving their marriage. As a result, it is the Service's view that the transfer falls within section 408(d)(6) of the Code, and Taxpayer A's accomplishing the proposed transfer will not give rise to a taxable distribution to either Taxpayer A or Taxpayer B under section 408(d)(1) of the Code.

Since the proposed transfer falls within section 408(d)(6) of the Code, it necessarily follows that such transfer cannot result in a prohibited transaction. To conclude otherwise would result in there being no distribution within the meaning of section 408(d)(1) of the Code because of the operation of section 408(d)(6), but, at the same time, there being a distribution within the meaning of section 408(d)(1) pursuant to sections 408(e)(2)(A) and (B) of the Code. Such result would negate section 408(d)(6).

The Service must also consider whether Taxpayer A's directions to the custodian of her transferee IRA give rise to adverse tax consequences for Taxpayer A.

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The Service must also address the issue of whether Taxpayer A's generally limiting her right to receive distributions (though not permanently) from her transferee IRA, through the above directions, constitutes either an impermissible forfeiture or an impermissible assignment either of amounts that exceed yearly required distributions or of any potential remainder interest in her transferee IRA.

The Service notes that, pursuant to section 408(a)(6) of the Code, an IRA is subject to the minimum required distribution rules of section 401(a)(9). As long as Taxpayer A, as an IRA holder, withdraws amounts sufficient to satisfy said rules, she incurs no tax penalty and her IRA complies with the qualification requirements of section 408 of the Code even though there is a likelihood that there will be a remainder interest in the IRA payable to one or more beneficiaries at her death.

Taxpayer A's directions to the custodian of her transferee IRA are intended to insure that required distributions are timely made to her in the manner she desires. Her distribution directions do not violate the requirements of section 408 of the Code and the transaction outlined herein is indistinguishable from a transaction in which a taxpayer voluntarily chooses, on a year by year basis, to receive only the minimum required distribution. Such a transaction would not constitute either an impermissible forfeiture or an impermissible assignment of any potential remainder interest in an IRA. Similarly, the transaction outlined herein also does not constitute either an impermissible forfeiture or an impermissible assignment of any potential remainder interest in Taxpayer A's transferee IRA.

**CONCLUSIONS:**

Thus, with respect to the requested rulings, the Service concludes as follows:

1. That the transferee individual retirement account set up and maintained in the name of Taxpayer A will be for her exclusive benefit;
2. That the above transaction will not be considered a prohibited transaction within the meaning of section 4975(c) of the Code;
3. That the above transaction will not give rise to a distribution from Taxpayer A's transferee IRA under section 408(e)(2)(B) of the Code;
4. That the above transaction will not give rise to an assignment by Taxpayer A of any or all of her transferee IRA described above; and
5. That the above transaction will not result in Taxpayer A's transferee IRA losing its exemption under section 408(e)(2)(A) of the Code.



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This ruling letter is based on the assumption that IRA X either has been, is, or will be qualified within the meaning of section 408 of the Code at all times relevant thereto. It also assumes that the transferee IRA to be set up and maintained in the name of Taxpayer A will meet the requirements of Code section 408 at all times relevant thereto. Finally, it assumes that the marriage of Taxpayers A and B was terminated by the Court T Judgment of Dissolution as asserted.

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 the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

If you wish to inquire about this ruling, please contact \*\*\*\*\*,  
\*\*\*\*\*, (I.D. #\*\*\*\*\*), at (\*\*\*) \*\*\*-\*\*\*\*.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1