



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201225020

*Uniform Issue List: 408.01-00*

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MAR 28 2012

LEGEND:

T:EP:RA:T2

- Taxpayer A: \*\*\*
- Decedent B: \*\*\*
- Trust T: \*\*\*
- Company C: \*\*\*
- IRA X: \*\*\*
- Date 1: \*\*\*
- Date 2: \*\*\*
- Date 3: \*\*\*
- State S: \*\*\*
- Amount A: \*\*\*

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Dear \*\*\*:

This is in response to the April 23, 2009 letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated April 9, 2010 and July 19, 2010, in which you request several letter rulings under section 408(d)(3) of the Internal Revenue Code ("Code").

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

Decedent B established Trust T, a revocable living trust, on Date 1. On Date 2, Decedent B died at age 79 and was survived by his wife, Taxpayer A, and four children. Trust T became irrevocable upon Decedent B's death. Taxpayer A represents that Trust T is governed by and valid under the laws of State S.

At the time of his death, Decedent B owned IRA X, an individual retirement account within the meaning of Code section 408(a), with Company C. Pursuant to a beneficiary designation form dated Date 3, Decedent B designated the trustee of Trust T as beneficiary of IRA X. The balance of Decedent B's interest in IRA X on his date of death was Amount A.

Trust T provides for the creation of two funds upon the death of Decedent B, Fund A and Fund B. Under the terms of Article II of the trust, Fund A is to be funded first, with an amount equal to the maximum marital deduction allowable in determining the federal estate tax on Decedent B's estate, less the aggregate value of all other property included in Decedent B's estate for federal estate tax purposes that qualifies for the marital deduction and that passes or has passed to Decedent B's spouse under Decedent B's will, as a surviving joint tenant, as a beneficiary of life insurance, or otherwise. Article II of Trust T further provides that the other part of the trust remaining after Fund A has been created shall be held in a separate trust designated Fund B. Taxpayer A represents that the full marital deduction applies with respect to Decedent B's estate. Taxpayer A further represents that the laws of State S, in conjunction with the terms of Trust T, compel the trustee of Trust T to allocate the proceeds of IRA X to Fund A.

Article III of Trust T provides that the net income from Fund A shall be paid to Taxpayer A, as Decedent B's spouse, and that Taxpayer A shall have the right to require the trustee to deliver to her any part or all of the principal of Fund A at any time.

Based on the above, you, through your authorized representative, request the following letter rulings:

1. Taxpayer A, as Decedent B's spouse, will be treated as having acquired IRA X directly from Decedent B for purposes of section 408(d)(3) of the Code, and not from Trust T.

2. The proceeds of IRA X to be distributed from Fund A of Trust T to Taxpayer A do not represent an inherited IRA within the meaning of Code section 408(d)(3).

3. Taxpayer A is eligible to roll over the distribution from IRA X to an IRA established and maintained in her own name pursuant to Code section 408(d)(3)(A)(i), provided that the rollover occurs no later than the sixtieth day following the day the proceeds of IRA X are distributed.

4. Taxpayer A will not be required to include in her gross income for federal income tax purposes for the calendar year in which the distribution and rollover occur the amount distributed from IRA X and timely rolled over into the IRA established and maintained in Taxpayer A's name.

With respect to the requested rulings, Code section 408(d)(1) provides generally that, in accordance with the rules of Code section 72, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Code section 408(d)(3)(A) provides that paragraph (d)(1) of this section 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) of the Code).

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual.

Section 1.408-8 of the Regulations, Q&A-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.

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However, the Preamble to the Regulations under Code section 401(a)(9) and 408(a)(6) 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.

With respect to your ruling requests, you have represented and have provided supporting documentation that the laws of State S in conjunction with the terms of Trust T compel the trustee of Trust T to allocate the proceeds of IRA X to Fund A. As Decedent B's spouse, Taxpayer A has a complete right of withdrawal with respect to the assets in Fund A. As noted above, Trust T obligates the trustee to pay all net income from Fund A to Taxpayer A, and Taxpayer A has the right to require the trustee to deliver the entire principal of Fund A at any time. Thus, we believe it is appropriate to treat Taxpayer A as the "payee" or "distributee" of IRA X for purposes of Code section 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, her portion of IRA X into an IRA established in her name.

Therefore, we conclude:

1. Taxpayer A, as Decedent B's spouse, will be treated as having acquired the proceeds of IRA X directly from Decedent B for purposes of section 408(d)(3) of the Code, and not from Trust T.
2. The proceeds of IRA X to be distributed from Fund A of Trust T to Taxpayer A do not represent an inherited IRA within the meaning of Code section 408(d)(3).
3. Taxpayer A is eligible to roll over the distribution from IRA X to an IRA established and maintained in her own name pursuant to Code section 408(d)(3)(A)(i), provided that the rollover occurs no later than the sixtieth day following the day the proceeds of IRA X are distributed.
4. Taxpayer A will not be required to include in her gross income for federal income tax purposes for the calendar year in which the distribution and rollover occur the amount distributed from IRA X and timely rolled over into the IRA established and maintained in Taxpayer A's 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 ruling is based on the assumption that IRA X and the IRA to be established meet the requirements of Code section

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408(a) at all relevant times. It also assumes the correctness of all facts and representations alluded to therein.

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 \*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc. \*\*\*