



Department of The Treasury
Internal Revenue Service
Washington, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408A.00-00; 408.03-00

Legend:

- Decedent A = *****
- Taxpayer B = *****
- Trust C = *****
- Roth IRA X = *****
- Roth IRA Y = *****

Dear *****:

This is in response to your request dated December 12, 2012, submitted by your authorized representative, as supplemented by your letter dated December 17, 2013, in which you request a ruling that Roth IRA X and Roth IRA Y will not be treated as inherited IRAs within the meaning of section 408(d) of the Internal Revenue Code (the "Code") with respect to you, and that you be permitted to rollover over the proceeds of Roth IRA X and Roth IRA Y into a Roth IRA maintained in your own name.

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

Decedent A died on ***** at age **. Decedent A was married to Taxpayer B on the date of his death. Decedent A maintained two Roth individual retirement accounts, Roth IRA X and Roth IRA Y. Decedent A designated Trust C as the beneficiary of Roth IRA X and Roth IRA Y.

Trust C provides that upon Decedent A's death, Taxpayer B (his spouse) becomes the sole trustee of Trust C.

Trust C provides that upon Decedent A's death, Trust C is divided into two sub-trusts, the Marital Trust and the Family Trust. The Marital Trust is to be funded with a pecuniary amount which, after certain adjustments, equals the amount of the minimum marital deduction required in order that the least possible federal estate tax will be payable at Decedent A's death. Trust C further provides that the remainder is to be allocated to the Family Trust. Trust C provides that the Trustee's decision as to the property to be allocated to the Marital Trust shall be final and conclusive and binding upon all beneficiaries, with certain exceptions not relevant here.

It is Taxpayer B's intention, as sole trustee of Trust C, to allocate the assets of Trust C *other than* Roth IRA X and Roth IRA Y to the Family Trust, up to the basic exclusion amount of \$*****. The remainder of Trust C's assets, including Roth IRA X and Roth IRA Y, would be allocated to the Marital Trust.

Under the terms of Trust C, the Trustee shall pay all net income of the Marital Trust to Taxpayer B. In addition, the Trustee may distribute to Taxpayer B, or use for her benefit, any portion or all of the principal of the Marital Trust as the Trustee deems desirable for her support, comfort, and welfare, in her accustomed manner of living, or "for any other purpose the Trustee believes to be for [Taxpayer B's] best interests." This provision further states that Decedent A's primary concern is for Taxpayer B's well-being and happiness and the Trustee need not consider the interest of any other beneficiary in making distributions to her or for her benefit.

Under the terms of Trust C, the Trustee has the power to distribute trust property in cash or in kind.

As sole trustee of Trust C, Taxpayer B proposes to make a distribution of Roth IRA X and Roth IRA Y to herself as beneficiary of the Marital Trust under her power to do so "for any purpose" because to do so is in her "best interest." It is Taxpayer B's intention to roll over said distribution into one or more IRAs set up and maintained in her own name.

At all times subsequent to Decedent A's death, Roth IRA X and Roth IRA Y have been maintained in the name of Decedent A.

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

1. Roth IRA X and Roth IRA Y will not be treated as inherited IRAs within the meaning of section 408(d) of the Code with respect to Taxpayer B.

2. Taxpayer B is eligible to roll over or have transferred, by means of a trustee to trustee transfer, Roth IRA X and Roth IRA Y into a Roth IRA set up and maintained in her own name, as long as the rollover of such distribution occurs no later than the 60th day from the date said distribution is received from the IRA.

With respect to your ruling requests, Section 408A(a) of the Code provides that, except as provided in such section, a Roth IRA shall be treated for tax purposes in the same manner as an individual retirement plan, defined in section 7701(a)(37) of the Code as an individual retirement account or individual retirement annuity under section 408(a) or 408(b).

Section 408A(c)(6) of the Code provides that no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

Section 408A(e)(1) of the Code provides that for purposes of that section, the term "qualified rollover contribution" includes a rollover contribution to a Roth IRA from another such account.

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.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5 ("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.

In this case, Decedent A designated Trust C as the beneficiary of Roth IRA X and Roth IRA Y. Decedent A's surviving spouse, Taxpayer B, is sole trustee of Trust C. Under the terms of Trust C, the decision as to which property will be allocated to the Marital Trust rests with Taxpayer B, as Trustee, subject to certain restrictions not applicable here. Pursuant to this authority, Taxpayer B intends to allocate Decedent A's Roth IRA X and Roth IRA Y to the Marital Trust.

As Trustee of the Marital Trust, Taxpayer B has the power to distribute to herself any portion or all of the property of the Marital Trust, for any purpose the Trustee believes to be in her best interests. Taxpayer B intends to distribute the proceeds of Roth IRA X and Roth IRA Y to herself as beneficiary of the Marital Trust, and to then rollover the distribution to one or more Roth IRAs maintained in her own name.

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 is treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, is not eligible to roll over the distributed IRA proceeds into her own IRA.

However, the general rule will not apply 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.

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

1. Roth IRA X and Roth IRA Y will not be treated as inherited IRAs within the meaning of section 408(d) of the Code with respect to Taxpayer B.
2. Taxpayer B is eligible to roll over or have transferred, by means of a trustee to trustee transfer, a distribution of the proceeds of Roth IRA X and

Roth IRA Y into a Roth IRA set up and maintained in her own name, as long as the rollover of such distribution occurs no later than the 60th day from the date said distribution is made from the IRA.

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is based on the assumption that that Roth IRA X and Roth IRA Y met the requirements of section 408A of the Code at all relevant times, and that the Trust is valid under applicable state law. It also assumes that any rollover Roth IRA established by Taxpayer B will also meet the requirements of section 408A at all relevant times.

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 ***** (ID *****) at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

CC: *****