



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201430029

APR 30 2014

Uniform Issue List: 408.03-00

XXX
XXX
XXX

SE:T:EP:RA:T3

Legend:

Decedent = XXX
Spouse = XXX
IRA X = XXX
Trust T = XXX

Dear XXX:

This is in response to your request dated November 10, 2011, submitted by your authorized representative, as supplemented by correspondence dated September 4, 2012, 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).

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

Decedent died on July 26, 2011. Decedent was survived by his spouse (Spouse) and two children. Neither Decedent nor Spouse had reached age 70 1/2 at the time of Decedent's death.

At his death, Decedent maintained an individual retirement account, IRA X. Decedent designated Trust T, a revocable trust established by Spouse, as the beneficiary of IRA X.

Trust T provides that Spouse, as its settlor, has the right to withdraw all or any portion of its net income and/or its principal. Trust T also provides that Spouse has the right to modify, amend, or revoke such trust at any time during her lifetime. Spouse is its sole trustee.

Based on the facts and representations, you request that the Internal Revenue Service issue the following rulings:

1. IRA X does not constitute an inherited IRA within the meaning of Code section 408(d)(3)(C) with respect to Spouse;
2. 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 Spouse's own name; and
3. Spouse will not be required to include in gross income for federal income tax purposes for the year in which 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 Spouse's name, provided that the rollover of such distribution occurs no later than the 60th day from the date on which IRA X proceeds are distributed from IRA X to Trust T.

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 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 designated Trust T as the beneficiary of IRA X. Decedent's surviving spouse, Spouse, is sole trustee of Trust T and has the right, as its settlor and one of its beneficiaries, to withdraw all or any portion of its principal and/or its net income at any time.

Spouse intends to distribute the proceeds of IRA X to herself as beneficiary of Trust T, and to then rollover the distribution to an IRA maintained in her own name.

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to its trustee, 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 its language to distribute 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. IRA X will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Spouse;
2. Spouse is eligible to roll over or transfer, by means of a trustee to trustee transfer, a distribution of the proceeds of IRA X into an 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 such distribution is made from IRA X; and
3. 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 Spouse's name, provided that

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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.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code,

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 IRA X met the requirements of section 408 of the Code at all relevant times, and that Trust T is valid under applicable state law. It also assumes that any rollover IRA established by Spouse will also meet the requirements of section 408 at all relevant times.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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.

If you wish to inquire about this ruling, please contact XXXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:

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