



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201507040

DEC 24 2014

Uniform Issue List: 408.03-00

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T:EP. RAITZ

Legend:

Taxpayer	=	XXXXXX
Decedent	=	XXXXXX
IRA X	=	XXXXXX XXXXXX XXXXXX
Trust	=	XXXXXX XXXXXX
Survivor's Trust	=	XXXXXX XXXXXX XXXXXX
Marital Trust	=	XXXXXX XXXXXX XXXXXX
Exemption Trust	=	XXXXXX XXXXXX XXXXXX
Date	=	XXXXXX

Dear XXXXX:

This is in response to your request dated November 26, 2013, submitted on your behalf by your authorized representative in which you request a ruling that IRA will not be treated as an inherited IRA 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 proceeds of IRA into an IRA in your own name.

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

Decedent died on Date. Decedent was married to Taxpayer on the date of his death. Decedent maintained IRA, and designated Trust as the beneficiary of IRA.

Trust provides that upon Decedent's death, Taxpayer becomes the sole trustee of Trust.

Trust provides that upon Decedent's death, Trust is divided into three trusts, a Survivor's Trust, a Marital Trust and an Exemption Trust. The Survivor's Trust is funded by payment of all net income to Taxpayer in quarter-annual installments and "so much of the principal as the Trustee considers necessary for the surviving spouse's proper health, support and enjoyment. Trustee shall have the right to withdraw and revoke all or any part of Survivor's Trust."

Under the terms of Trust, Taxpayer, as sole Trustee, allocated all retirement accounts of Decedent to Survivor Trust. Additionally, Taxpayer, acting in her capacity as sole trustee revoked the Survivor's Trust and withdrew the right of the Survivor's Trust to IRA X. Under the terms of Trust, if Survivor's Trust is revoked, IRA X would pass to the beneficiary of Trust. Taxpayer is sole beneficiary of Trust, and therefore has the right to receive IRA X.

Taxpayer, as sole Trustee of Trust, proposes to take possession of IRA X as sole beneficiary of Survivor's Trust. It is Taxpayer's intention to roll over said assets into one or more IRAs set up and maintained in her own name.

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

1. IRA X will not be treated as an inherited IRA within the meaning of 408(d) of the Code with respect to Taxpayer.
2. Taxpayer is eligible to roll over or have transferred by means of a trustee to trustee transfer, 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 said distribution is received from IRA X.

With respect to your ruling requests, Section 408(d)(1) of the Code provides that, except as provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, 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 as the beneficiary of IRA X. Decedent's surviving spouse, Taxpayer, is sole trustee of Trust. Under the terms of Trust, the decision as to which property will be allocated to the Survivor's Trust rests with Taxpayer, as Trustee. Pursuant to this authority, Taxpayer allocated IRA X to the Survivor's Trust.

As Trustee of the Survivor's Trust, Taxpayer has the power to distribute to herself any portion or all of the property of the Survivor's Trust, including the proceeds of IRA X, for the surviving spouse's proper health, support and enjoyment. As trustee of the

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Survivor's Trust, Taxpayer revoked the Survivor's Trust and thus its right to IRA X. Taxpayer intends to distribute the proceeds of IRA to herself as beneficiary of the Survivor's Trust, and then rollover the funds into 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 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 herself the IRA proceeds. 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 Taxpayer.
2. Taxpayer 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 said distribution is made from the IRA.

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

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 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 XXXXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

A handwritten signature in cursive script that reads "Sherri Morris for". The signature is written in black ink and is positioned above the printed name and title.

Jason E. Levine, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:

XXXXX
XXXXX
XXXXX