

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201612001**

Release Date: 3/18/2016

Index Number: 408.00-00, 408A.00-00,  
408.03-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:TEGE:EB:QP2  
PLR-113148-15

Date:  
December 17, 2015

LEGEND:

Decedent =

Taxpayer =

Date A =

Date B =

Service Provider =

IRA Account =

Roth IRA Account =

Dear :

This responds to your April 7, 2015 request for a ruling 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 rulings requested:

Decedent and Taxpayer were married on Date A and remained married at the time of Decedent's death on Date B. At the time of his death, Decedent maintained IRA Account and Roth IRA Account with Service Provider and, because the sole beneficiary of these accounts was deceased, Decedent's estate was replaced as the sole

beneficiary of the accounts under the terms of Service Provider's account agreements with Decedent.

Decedent died intestate and Taxpayer was the sole heir and administrator of the estate. As Decedent's surviving spouse, Taxpayer elected to treat both accounts as her own and directed Service Provider to redesignate the accounts accordingly.

Taxpayer requests the following rulings:

1. That Taxpayer will be treated for purposes of section 408(d)(3) of the Code, as payee or distributee of the proceeds from IRA Account and Roth IRA Account;
2. That IRA Account and Roth IRA Account will not be treated as inherited IRAs within the meaning of section 408(d)(3) of the Code with respect to Taxpayer;
3. That Taxpayer is eligible to roll over the proceeds from IRA Account and Roth IRA Account to an IRA, and a Roth IRA, respectively, set up and maintained in her own name, pursuant to section 408(d)(3)(A)(i) of the Code; as long as the rollover occurs no later than the 60th day the proceeds are received by Taxpayer; and
4. That Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution of IRA Account and Roth IRA Account is made, any portion of the proceeds distributed from IRA Account and Roth IRA account that are timely rolled over to an IRA, and Roth IRA, respectively, set up and maintained in Taxpayer's name.

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) of the Code, 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)(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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(C)(i) of the Code provides that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution. Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA acquired 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.

Generally, if the proceeds of a decedent's IRA pass through a third party, e.g. a trust or an estate, and then are distributed to the decedent's surviving spouse, the surviving spouse will be treated as having received the IRA proceeds from the third party and not from the decedent's IRA. Thus, generally a surviving spouse will not be eligible to roll over the distributed IRA proceeds into her own IRA. However, the general rule will not apply in a case where the IRA has not yet been distributed and the surviving spouse, as fiduciary of the decedent's estate, has the sole authority and discretion to pay the IRA proceeds to herself. In such a case, when the surviving spouse actually receives the

IRA proceeds, the surviving spouse may roll over the amounts into an IRA set up and maintained in her own name within 60 days.

The preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from a deceased spouse's IRA is permitted to roll that distribution over into the spouse's own IRA even if the spouse is not the sole beneficiary of the decedent'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.

In this case, Decedent's interest in IRA Account and Roth IRA Account passed to his estate. Taxpayer is both the administrator of the estate and its sole heir with the right to direct any and all amounts from the estate without restriction. Under this set of circumstances, no third party can prevent Taxpayer from receiving the proceeds of IRA Account and Roth IRA Account and from rolling over the full amount of IRA Account and Roth IRA Account into IRA and Roth IRA accounts set up and maintained in the name of the Taxpayer. In addition, as Decedent's surviving spouse, Taxpayer elected to treat both accounts as her own and directed Service Provider to redesignate the accounts accordingly.

Therefore, with respect to your ruling requests, we conclude that:

1. Taxpayer will be treated for purposes of section 408(d)(3) of the Code, as payee or distribute of the proceeds from IRA Account and Roth IRA Account ;
2. IRA Account and Roth IRA Account will not be treated as inherited IRAs within the meaning of section 408(d)(3) of the Code with respect to Taxpayer;
3. Taxpayer is eligible to roll over the proceeds from IRA Account and Roth IRA Account to an IRA, and a Roth IRA, respectively, set up and maintained in her own name, pursuant to section 408(d)(3)(A)(i) of the Code; as long as the rollover occurs no later than the 60th day after the proceeds are received by Taxpayer; and
4. Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution of IRA Account and Roth IRA Account is made, any portion of the proceeds distributed from IRA Account and Roth IRA Account that are timely rolled over to an IRA, and Roth IRA, respectively, set up and maintained in Taxpayer'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 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.

Sincerely,

*/S/*

Keith Kost  
Senior Technician Reviewer  
Qualified Plans Branch 2  
Office of Associate Chief Counsel  
(Tax Exempt & Government Entities)

cc: