

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
January 27, 2016

Taxpayer A =
Decedent B =
Custodian C =
IRA D =
Date 1 =
Date 2 =

Dear :

This letter responds to your request dated September 10, 2014, as supplemented by correspondence dated March 27, 2015 and January 11, 2016, submitted on your behalf by your authorized representative, in which you request rulings that IRA D will not be treated as an inherited IRA under section 408(d) of the Internal Revenue Code (Code) and that you will be permitted to roll over the proceeds of IRA D to an IRA in your own name.

The following facts and representations were submitted under penalties of perjury on your behalf:

Decedent B established IRA D in 2010 and did not designate a beneficiary on the adoption agreement form. Decedent B was born on Date 1. You represent that the adoption agreement provides that if no beneficiary is designated Custodian C shall distribute any remaining balance of the IRA to the estate.

Decedent B died testate on Date 2 failing to reach age 70 1/2. Article Three of the Last Will and Testament (Will) gave all of the estate to Taxpayer A, her spouse. Article Six of the Will names Taxpayer A as sole executor of the Will.

Taxpayer A, as surviving spouse and personal representative of the estate and sole beneficiary of the estate, intends to distribute IRA D to himself and, within 60 days of receipt, rollover the proceeds of IRA D into an IRA in his own name.

Based on the preceding facts Taxpayer A requests the following rulings:

1. Taxpayer A as surviving spouse, personal representative and sole beneficiary of Decedent B's estate will be treated for purposes of section 408(d)(3), as the payee or distributee of the proceeds from IRA D.
2. IRA D will not be treated as an inherited IRA within the meaning of section 408(d)(3) with respect to Taxpayer A.
3. Taxpayer A is eligible to roll over IRA D to an IRA set up and maintained in his own name pursuant to section 408(d)(3)(A)(i), as long as the rollover occurs no later than 60 days after the proceeds are received by Taxpayer A in his capacity as personal representative of Decedent B's estate.
4. Taxpayer A will not be required to include in gross income for federal tax purposes, for the year in which the distribution of IRA D is made, any portion of the proceeds distributed from IRA D that are timely rolled over to an IRA set up and maintained in Taxpayer A's name.

With respect to your ruling requests, section 408(d)(1) 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.

Section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Section 408(d)(3)(A) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account 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 he receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan 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)(B) provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in his gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) provides, in pertinent part, 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 gross 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) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

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.

Generally, if a decedent's IRA proceeds pass through a third party, e.g. 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 IRA proceeds into his own IRA.

However, the general rule will not apply where the decedent's estate is the beneficiary of a decedent's IRA proceeds, and the decedent's surviving spouse is the sole executor of the estate and the sole beneficiary of the IRA proceeds that pass through the estate. Under these circumstances no third party can prevent Taxpayer A from receiving the proceeds of the IRA and from rolling over the proceeds into his own IRA.

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

1. Taxpayer A will be treated for purposes of section 408(d)(3), as the payee or distributee of the proceeds from IRA D;
2. IRA D will not be treated as an inherited IRA within the meaning of section 408(d)(3) with respect to Taxpayer A;

3. Taxpayer A is eligible to roll over IRA D to an IRA set up and maintained in his own name pursuant to section 408(d)(3)(A)(i), as long as the rollover occurs no later than 60 days after the proceeds are received by Taxpayer A in his capacity as personal representative of Decedent B's estate.
4. Taxpayer A will not be required to include in gross income for federal tax purposes, for the year in which the distribution of IRA D is made, any portion of the proceeds distributed from IRA D that are timely rolled over to an IRA set up and maintained in Taxpayer A's name.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Ingrid E Grinde
Senior Tax Law Specialist
(Qualified Plans Branch 3)
Tax Exempt & Government Entities

cc: