

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:TEGE:EB:QP4
PLR-115567-16
Date:
November 03, 2016

Legend:

Decedent =

Custodian A =

Taxpayer B =

IRA C =

State D =

Dear _____:

This letter is in response to your request dated May 5, 2016, submitted by your authorized representative, for a ruling under section 408(d) of the Internal Revenue Code (Code).

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

Decedent maintained an individual retirement account (IRA) with Custodian A. Decedent died on _____, at age _____. At the time of his death, Decedent was a resident of State D. Taxpayer B is also a resident of State D.

The beneficiary forms on file with Custodian A provide that the pay on death beneficiary for IRA C is an inter vivos trust created by the Decedent. However, there is no evidence that Decedent created this trust. Custodian A did not keep a copy of the trust in its file when it accepted the Decedent's beneficiary designation. Taxpayer B has

looked through Decedent's records and is unable to find any evidence that a trust was created.

Decedent's Last Will dated _____, does not refer to any trust. Pursuant to Decedent's will, Decedent's entire estate was left to Taxpayer B. Taxpayer B, as the surviving spouse, wants to rollover Decedent's IRA C to her own IRA.

The Probate Code of State D has a provision that allows a court to order a retroactive change in a beneficiary designation in certain limited circumstances. Taxpayer B intends to obtain court approval to change the beneficiary designation on IRA C from the trust to herself and then accomplish a rollover. Taxpayer B would like to complete the rollover in 2016. However, because the beneficiary forms on file with Custodian A still list a trust as beneficiary, Custodian A will not release the balance of IRA C to Taxpayer B unless she obtains a court order from state court to modify "the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention" in order to achieve a transferor's tax objectives.

Based on the foregoing facts and representations and conditional on the entry of State D's court order approving the change of beneficiary designation on IRA C from the trust to herself under the authority in State D Revised Statutes, you have requested the following rulings:

1. That, with respect to Taxpayer B, Decedent's IRA C will not be an inherited IRA as that term is defined in section 408(d)(3)(C)(ii) of the Code;
2. That Taxpayer B may be treated as the distributee or payee of Decedent's IRA C for purposes of section 408(d)(3) of the Code; and
3. That Taxpayer B, the surviving spouse of Decedent, may roll over the IRA distribution which she will receive. Furthermore, as long as the rollover is timely, the IRA C distribution will not be included in Taxpayer B's gross income, pursuant to section 408(d)(1) of the Code, with respect to calendar year 2016, the year in which the distribution will occur.

Under section 408(a)(6) and the regulations thereunder, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) apply to the distribution of the entire interest of an individual for whose benefit the IRA is maintained.

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 section 408(d)(3)(A) and 408(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 1-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 is not includible in his gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) 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 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 408(d)(3)(E) provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 1.408-8, Q&A-1(a) of the Income Tax Regulations (Regulations) provides that an IRA is subject to the required minimum distribution rules under section 401(a)(9). In order to satisfy section 401(a)(9), the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided.

Section 1.408-8, Q&A-1(b) provides that for purposes of applying the required minimum distribution rules in section 1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA

trustee, custodian or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

Section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee:

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) provides, in relevant part, that for purposes of this paragraph, the term “required beginning date” means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 ½.

Section 401(a)(9)(B)(ii) provides that a trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee’s interest has begun in accordance with 401(a)(9)(A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

Section 1.401(a)(9)-3, Q&A-2, of the Regulations provides that in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the employee’s entire interest must be distributed by the end of the calendar year which contains the fifth anniversary of the date of the employee’s death.

Section 401(a)(9)(E) provides that for purposes of section 401(a)(9), the term designated beneficiary means any individual designated beneficiary by the employee.

Section 1.401(a)(9)-4, Q&A-4, of the Regulations provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the employee’s death. Generally, an employee’s designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee’s death will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the date of death (that is, have not received their entire interest before that September 30).

Following the entry of State D's court order approving the change of beneficiary designation on IRA C from the trust to herself under the authority in State D Revised Statutes, the rules discussed above will apply to your ruling requests as follows:

1. Taxpayer B, the surviving spouse of Decedent, is the individual for whose benefit the account is maintained. Taxpayer B acquired IRA C by reason of Decedent's death. Accordingly, Decedent's IRA C is not an inherited IRA for purposes of section 408(d)(3) with respect to Taxpayer B.
2. The court order cannot create a "designated beneficiary" for purposes of section 401(a)(9) because Taxpayer B was not the designated beneficiary of IRA C as of the date of Decedent's death. Accordingly, there is no "designated beneficiary" of IRA C for purposes of section 401(a)(9).
3. Decedent died before the required beginning date and without a "designated beneficiary." Accordingly, the entire interest in IRA C must be distributed using the 5-year rule described in section 401(a)(9)(B)(ii). Under this rule, any amounts payable from IRA C to Taxpayer B in years 1 – 4 following the year in which decedent died are not required minimum distributions and are eligible for rollover by Taxpayer B at a time that Taxpayer B is the beneficiary under IRA C, provided the distribution meets the other rollover requirements under section 408(d), and, pursuant to section 408(d), if rolled over, the amounts distributed from IRA C will not be included in Taxpayer B's gross income, with respect to the year in which the distribution occurs. On or after January 1 of the fifth year following the year in which Decedent died, any amount payable from IRA C to Taxpayer B is not eligible for rollover because it is a required minimum distribution and will be included in Taxpayer B's gross income with respect to the year in which the distribution occurs.

Except as expressly provided herein, no opinion is expressed or implied concerning the 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,

Cathy V. Pastor
Senior Counsel
Qualified Plans Branch 4
Office of Associate Chief Counsel
(Tax Exempt & Government Entities)