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Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:TEGE:EB:QP2  
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Date:  
November 08, 2016

Taxpayer =  
Decedent =  
Trust =

Dear \_\_\_\_\_ :

This letter responds to your request dated December 30, 2015, as supplemented by correspondence dated October 28, 2016, submitted on your behalf by your authorized representative, in which you request a series of rulings on the spousal rollover of individual retirement accounts designated to a joint revocable trust.

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

Decedent was married to Taxpayer until his death on \_\_\_\_\_, just prior to attaining age 70 ½. Decedent has two adult children from a prior marriage and Taxpayer has one adult child from a prior marriage. Decedent and Taxpayer were residents of \_\_\_\_\_ and held all of their assets as community property.

At the time of his death, Decedent owned seven Roth IRAs and one traditional IRA with a combined value of approximately \$ \_\_\_\_\_ (the Retirement Accounts).

In \_\_\_\_\_, Decedent and Taxpayer created a revocable trust (Trust) of which they were the sole trustees. The Trust was amended and restated in 2011. The IRAs are listed on the schedule attached to the Trust document as property held in trust. From the time the Trust was created until Decedent's death, Decedent and Taxpayer were the trustees of the Trust. Upon Decedent's death, Taxpayer became the sole trustee of the Trust

and various subtrusts that arose upon Decedent's death. The Trust vests Taxpayer with complete authority and sole control in allocating assets to the subtrusts. The first subtrust is the Survivor's Trust. Taxpayer, as sole trustee is to allocate her separate property and a portion of the trust estate corresponding to her community property interest in the trust estate to the Survivor's Trust. During her life she is entitled to the income and principal of the Survivor's Trust up to and including the entire trust estate of the Survivor's Trust. Upon her death, any remaining assets will be added to the second trust, the Bypass Trust. Taxpayer, as trustee, is to allocate an amount based on a formula designed to minimize federal estate tax to the Bypass Trust, and the balance of the Trust's assets are to be allocated to the third subtrust, the Marital Trust. During Taxpayer's life she is entitled to all of the income from the Bypass Trust and the Marital Trust as well as such amounts of principal as are necessary for her health, education, support and maintenance, except that the distributions of principal from the Marital Trust may not occur unless and until the Survivor's Trust has no readily marketable assets remaining, and distributions of principal from the Bypass Trust may not occur until both the Survivor's Trust and the Marital Trust have no readily marketable assets remaining. Taxpayer is also required to receive any IRA distributions that are paid to either the Bypass Trust or the Marital Trust. Upon Taxpayer's death, remaining assets in the Marital Trust will be distributed to the Bypass Trust and the Bypass Trust will pass to two of the adult children.

Also, under the terms of the Trust, upon Decedent's death the Trust became irrevocable except with respect to the Survivor's Trust.

As part of their estate planning, Taxpayer represents that she and Decedent communicated to their attorney that they wanted Taxpayer to have the flexibility to elect to treat Decedent's IRAs as her own if she was the surviving spouse. For four of the Roth IRAs, the attorney caused death beneficiary designation forms to name the Trust as beneficiary. Taxpayer represents that it was her understanding that she could achieve a spousal rollover of these amounts by first allocating them to the Survivor's Trust. For the other three Roth IRAs and the traditional IRA, the Marital Trust was named beneficiary. The Trust does not grant Taxpayer the authority to reallocate amounts from the Marital Trust to the Survivor's Trust.

In order to remedy her situation, Taxpayer obtained an order from the Superior Court of The County of \_\_\_\_\_, reforming the Marital Trust beneficiary designations retroactive to their original execution date to show the Trust as the primary beneficiary. The order was entered on \_\_\_\_\_. Pursuant to the order, Taxpayer allocated the entirety of four of the Roth IRAs to the Survivor's Trust and half of each of the other three Roth IRAs and half of the traditional IRA to the Survivor's Trust, with the remaining half of each of those IRAs being allocated to the Marital Trust.

Taxpayer intends to set up and maintain a Roth IRA in her name and a traditional IRA in her name to take a distribution of the traditional IRA and the Roth IRAs held by the

Survivor's Trust. Pursuant to section 408(d) of the Internal Revenue Code (Code), Taxpayer intends to roll over the portion of the distribution consisting of Roth IRA assets to the custodian of her Roth IRA and the portion of the distribution consisting of traditional IRA assets to the custodian of her traditional IRA (Spousal Rollover Transaction). The Spousal Rollover Transaction will not include any amounts that are or were required minimum distributions for any of the IRAs for the calendar years 2012 through the calendar year in which the Spousal Rollover Transaction occurs.

Based on the preceding facts, Taxpayer requests the following rulings with respect to the Spousal Rollover Transaction:

1. The Survivor's Trust Retirement Accounts are not inherited IRAs (or inherited Roth IRAs) with respect to Taxpayer for purposes of section 408(d)(3).
2. Taxpayer will be treated as the payee or distributee of the Survivor's Trust Retirement Accounts for purposes of qualifying to elect the Accounts as her own under § 1.408-8, Q&A-5 of the Income Tax Regulations, even though the Accounts did not designate her individually.
3. The Spousal Rollover Transaction is a proper rollover pursuant to section 408(d)(3) and constitutes a valid election on Taxpayer's part to treat each of the Survivor's Trust Retirement Accounts as her own within the meaning of § 1.408-8, Q&A-5.
4. Taxpayer will not be required to include any portion of the assets distributed pursuant to the Spousal Rollover Transaction in her gross income for federal income tax purposes for the year in which the Spousal Rollover Transaction occurs, pursuant to sections 408(d)(3) and 408A(d)(1).
5. Beginning with the year following the year in which the Spousal Rollover Transaction occurs, Taxpayer will not be required to take required minimum distributions from Taxpayer's Roth IRA pursuant to section 408A(c)(5).
6. Beginning with the year following the year in which the Spousal Rollover Transaction occurs, Taxpayer will be required to take minimum required distributions from Taxpayer's IRA as calculated in accordance with section 401(a)(9)(A) applied treating the Taxpayer as the IRA owner.

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 60<sup>th</sup> 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 408A(a) provides that except as provided in section 408A, a Roth IRA generally is treated in the same manner as a traditional IRA.

Section 408A(c)(5)(A) provides that the required minimum distribution rules of section 401(a)(9)(A) do not apply prior to the death of the Roth IRA owner.

Section 408A(a)(6) provides that the only rollover contribution permitted to a Roth IRA is a qualified rollover contribution. Section 408A(e) defines a qualified rollover contribution in pertinent part as a rollover to a Roth IRA from another Roth IRA. Under section 408A(e)(1) a qualified rollover from an individual retirement plan other than a Roth IRA to a Roth IRA is disregarded for purposes of the one-rollover-per-year rule of section 498(d)(3)(B).

Section 1.408-8, Q&A 5, provides that a surviving spouse of an individual may elect to treat the spouse's entire interest as a beneficiary in the 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 the present case, Decedent's traditional IRA and seven Roth IRAs passed to the Trust upon Decedent's death. Taxpayer, as sole trustee of Trust, under the terms of Trust, had sole authority and discretion to determine which Trust assets were to be allocated to each of the subtrusts (Survivor's Trust, Bypass Trust and Marital Trust). Pursuant to her authority, Taxpayer allocated the entirety of four of the Roth IRAs as well a one-half of the traditional IRA and one-half of each of the three remaining Roth IRAs to the Survivor's Trust. Taxpayer allocated the remainder of the IRAs to the Marital Trust.

Under the terms of the Survivor's Trust, Taxpayer is entitled to receive as much of the income and principal of the Survivor's Trust as she directs, up to and including the entire trust estate of the Survivor's Trust. Under this set of circumstances, Taxpayer, as the surviving spouse of Decedent, may not treat Decedent's Roth IRAs or traditional IRA as her own, because the Trust was named as the beneficiary of each of the IRAs. However, because Taxpayer is the trustee and sole beneficiary of the Survivor's Trust and is entitled to the income and principal of the Survivor's Trust up to and including the entire trust estate of the Survivor's Trust, for purposes of applying section 408(d)(3)(A) to the Decedent's IRAs, Taxpayer is effectively the individual for whose benefit the accounts are maintained. Accordingly, if Taxpayer receives a distribution of the proceeds of Decedent's Roth IRAs and Decedent's traditional IRA, she may roll over the distribution (other than those required minimum distribution amounts required to have been distributed or to be distributed in accordance with section 401(a)(9)) into a Roth IRA and a traditional IRA established and maintained in her name. However, in accordance with section 408(d)(3)(B), Taxpayer may not roll over more than one IRA distribution within a one-year period. In order to avoid this limitation with respect to the Roth IRAs, the Trust would need to consolidate the Roth IRAs into a single Roth IRA by means of a series of trustee-to-trustee transfers.

To the extent that Taxpayer may roll over a distribution, beginning with the year following the year in which each rollover occurs, the rules of section 401(a)(9) pertaining to required minimum distributions will apply to Taxpayer's traditional IRA or Roth IRA, as the case may be, taking into account Taxpayer as the IRA owner.

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

1. Decedent's IRA and Roth IRAs are not inherited IRAs for purposes of section 408(d)(3) with respect to Taxpayer.
2. Taxpayer will be treated as the payee or distributee of the portions of Decedent's traditional IRA and Roth IRAs that have been allocated to the Survivor's Trust and that are distributed to Taxpayer from each IRA. However, in accordance with § 1.408-8, Q&A 5, Taxpayer may not treat Decedent's IRAs as her own.

- 3 Taxpayer will be eligible to roll over the distributions she receives from the traditional IRA and each Roth IRA to a traditional IRA or Roth IRA respectively, established and maintained in Taxpayer's name pursuant to section 408(d)(3), provided that she does not roll over more than one IRA distribution within a one-year period. However, in accordance with § 1.408-8, Q&A 5, Taxpayer may not treat Decedent's IRAs as her own.
- 4 Taxpayer will not be required to include the portion of any distribution to her from Decedent's traditional IRA and Roth IRAs in her gross income for federal income tax purposes for the year in which that amount is distributed to Taxpayer and rolled over into Taxpayer's traditional IRA or Roth IRA, pursuant to section 408(d)(3), provided that she does not roll over more than one IRA distribution within a one-year period.
- 5 Beginning with the year following the year in which Taxpayer rolls over a Roth IRA distribution to her own Roth IRA, Taxpayer will not be required to take required minimum distributions from Taxpayer's Roth IRA pursuant to section 408A(c)(5).
- 6 Beginning with the year following the year in which Taxpayer rolls over a distribution from Decedent's traditional IRA to her own traditional IRA, minimum required distributions from Taxpayer's traditional IRA will be calculated in accordance with section 401(a)(9)(A) with Taxpayer as the IRA owner.

This ruling is based on the assumption that the order from the \_\_\_\_\_ was effective to reform the beneficiary designations retroactive to their original execution date such that the IRAs originally assigned to the Marital Trust could be allocated to the Survivor's Trust.

This ruling expresses no opinion concerning any effect of the order from the \_\_\_\_\_ on the determination of required minimum distributions under section 408(a)(6).

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, as specified in Rev. Proc. 2016-1, 2016-1 I.R.B. 1, § 7.01(15)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2016-1, § 11.05.

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) 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,

Laura B. Warshawsky  
Senior Technician Reviewer  
(Qualified Plans Branch 2)  
Tax Exempt & Government Entities

cc: