

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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Date:
April 30, 2018

Administrator =

Taxpayer =
Decedent =
Trust =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 =
Year 2 =
State =
IRA =

Rollover IRA =
Custodian =

Dear :

This letter responds to Taxpayer's request dated May 3, 2013, as supplemented by correspondence following Taxpayer's death on Date 5 dated March 2, 2015, January 1, 2016, January 26, 2017, February 22, 2017, June 22, 2017 and August 16, 2017, submitted on behalf of Administrator, administrator of Taxpayer's estate by Administrator's authorized representative, in which a series of rulings are requested under section 408(d) of the Internal Revenue Code (Code).

The following facts and representations were submitted under penalty of perjury on first, Taxpayer's, and subsequently, Administrator's behalf:

Decedent and Taxpayer (husband and wife) established a revocable trust (Trust) on Date 1 under the laws of State. Decedent died on Date 2. All assets held by Trust consisted entirely of Taxpayer's and Decedent's community property.

Upon Decedent's death, Taxpayer became the sole trustee of Trust. At the time of Decedent's death, Decedent owned an IRA, held by Custodian. Trust was listed as the beneficiary of IRA. When Decedent died, IRA became an asset of the Trust.

In accordance with the terms of the Trust, Trust assets (including IRA) were allocated to a subtrust (Survivor's Trust).

Under the terms of the Survivor's Trust, Taxpayer, as the sole income and principal beneficiary, was entitled to receive the right to income for life, and as much of the principal as is reasonably necessary for Taxpayer's health, support, maintenance, comfort, or happiness, to maintain, at a minimum, Taxpayer's accustomed manner of living. The Trust also granted Taxpayer the unlimited right to appoint any or all of the Survivor's Trust property, including to herself.

On Date 3, through the exercise of Taxpayer's power of appointment under the Survivor's Trust, the assets of IRA were distributed and transferred to a non-IRA account of the Survivor's Trust. On Date 4, which is within sixty (60) days of Date 3, those amounts were distributed from the non-IRA account held by the Survivor's Trust and paid to Rollover IRA, established in Taxpayer's name.

On Date 5, after submitting this request, Taxpayer died. Administrator is pursuing this request on behalf of the Taxpayer's estate.

Based on the preceding facts, Taxpayer requested the following rulings:

1. That Taxpayer will be treated as the payee or distributee of Decedent's IRA.
2. That Decedent's IRA is not an inherited IRA for purposes of section 408(d)(3)(C) with respect to Taxpayer.
3. That Taxpayer's rollover of IRA assets into Rollover IRA in her name was a valid rollover under section 408(d)(3).
4. That Taxpayer will not be required to include in her gross income for federal income tax purposes in Year 1 or Year 2 the amount distributed from Decedent's IRA and rolled over to Rollover IRA, pursuant to section 408(d)(3).

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 section 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 the 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.

In the present case, Decedent's IRA passed to the Trust. Pursuant to the terms of the Trust, Trust assets, including IRA were allocated to the Survivor's Trust. However, under the terms of the Survivor's Trust, Taxpayer, as sole beneficiary, was entitled to receive all of the income and principal of the Survivor's Trust (to which IRA was allocated). This is because Taxpayer had the right to, and did, in fact, direct the trustee in writing to pay to Taxpayer any such amounts from the Survivor's Trust, as Taxpayer

may designate, which included directing the assets from IRA to first be distributed from IRA and then, within 60 days, rolled over to Rollover IRA (notwithstanding the fact that the assets were held in a non-IRA account before being paid to Rollover IRA). Accordingly, for purposes of applying section 408(d)(3)(A) to the IRA, Taxpayer is effectively the individual for whose benefit the account is maintained. As such, Taxpayer was entitled to roll over such amounts (other than those required minimum distribution amounts required to have been distributed under section 401(a)(9)) into Rollover IRA, an IRA established and maintained in her name.

Therefore, with respect to your ruling requests we conclude:

1. That Taxpayer will be treated as the payee or distributee of Decedent's IRA.
2. That Decedent's IRA is not an inherited IRA for purposes of section 408(d)(3) with respect to Taxpayer.
3. That Taxpayer's rollover of the assets from Decedent's IRA into Rollover IRA in her name was a valid rollover under section 408(d)(3).
4. That Taxpayer will not be required to include in her gross income for federal income tax purposes in Year 1 or Year 2 the amount distributed from Decedent's IRA and rolled over to Rollover IRA, pursuant to section 408(d)(3).

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.

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. 2018-1, 2018-1 I.R.B. 1, § 7.01(16)(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. 2018-1, § 11.05

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

Sincerely,

Jason Levine
Senior Technician Reviewer
Qualified Plans, Branch 4
Tax Exempt & Government Entities

cc: