

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None
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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
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PLR-105003-18

Date:
August 08, 2018

Taxpayer =
Decedent =
Trust =
Date 1 =
Date 2 =

Dear :

This is in response to your letter dated January 30, 2018, submitted on your behalf by your authorized representative, in which you requested a series of rulings under section 408(d) of the Internal Revenue Code.

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

Taxpayer established the Trust, a revocable living trust, on Date 1. Taxpayer is the sole trustee of the Trust and reserves the sole right to amend or revoke the Trust and to distribute all income and the entire corpus for her own benefit.

Decedent was married to Taxpayer until his death, after his required beginning date, on Date 2. Decedent maintained an IRA with a custodian at the time of his death and named the Trust as the primary beneficiary of Decedent's IRA. The assets of Decedent's IRA were transferred via a trustee-to-trustee transfer, to an IRA for the benefit of the Trust (the IRA).

Taxpayer intends to distribute the assets of the IRA to herself, as sole beneficiary of the Trust, and roll over the distribution into one or more IRAs in her own name.

Based on the preceding facts Taxpayer requests the following rulings:

1. Taxpayer, as Decedent's spouse, will be treated as having acquired the IRA directly from Decedent, and not from the Trust;
2. Taxpayer is eligible to roll over the IRA distribution to one or more IRAs established and maintained in her own name pursuant to section 408(d)(3)(A)(i), provided that the rollover occurs no later than the sixtieth day following the day the proceeds of the IRA are received; and
3. Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution from the IRA is made, any portion of the proceeds distributed from the IRA which are timely rolled over to one or more IRAs set up and maintained in Taxpayer'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 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 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 (an 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, 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 the beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

Under the preceding facts, Decedent's IRA passed to the Trust upon decedent's death. Under these circumstances, Taxpayer, as the surviving spouse of the Decedent, is not permitted to treat the IRA as her own, because the Trust was named the beneficiary of Decedent's IRA. However, because Taxpayer is the trustee and sole beneficiary of the Trust and is entitled to all income and the entire corpus of the Trust, for purposes of applying section 408(d)(3)(A) to the IRA, Taxpayer is effectively the individual for whose benefit the account is maintained. Accordingly, if Taxpayer receives a distribution of the proceeds of the IRA, she may roll over the distribution (other than amounts required to have been distributed or to be distributed in accordance with section 401(a)(9)) into one or more IRAs established and maintained in her name.

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

1. Taxpayer, as Decedent's spouse, will be treated as having acquired the IRA directly from Decedent, and not from the Trust;
2. Taxpayer is eligible to roll over the IRA distribution to one or more IRAs established and maintained in her own name pursuant to section 408(d)(3)(A)(i), provided that the rollover occurs no later than the sixtieth day following the day the proceeds of the IRA are received; and
3. Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution from the IRA is made, any portion of the proceeds distributed from the IRA which are timely rolled over to one or more IRAs set up and maintained in Taxpayer's name.

This ruling does not authorize the rollover of amounts that are required to be distributed under section 401(a)(9) and is subject to the limitation in section 408(d)(3)(B).

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.

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, section 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, section 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,

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