

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
ID. No.
Telephone Number:

In Re: Private Letter Ruling Request

Refer Reply To:
CC:EEE:EB:QP3
PLR-122508-21

Date:
April 14, 2022

Taxpayer =
Decedent =
Daughter =
Son-in-Law =
IRA X =
IRA Y =
IRA Z =
Trust =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This is in response to a request for a letter ruling under section 408(d)(3) of the Internal Revenue Code (Code), submitted on behalf of Taxpayer by Taxpayer’s authorized representatives in correspondence dated October 14, 2021, as amended by correspondence dated March 11, 2022.

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

Taxpayer was married to Decedent until Decedent’s death on Date 1. During their joint lives, Taxpayer and Decedent executed Trust on Date 2, naming themselves as trustees of Trust. Taxpayer and Decedent restated Trust on Date 3. Taxpayer and Decedent appointed Daughter and Son-in Law as co-trustees of Trust on Date 4. Under of Trust’s terms, after Decedent’s death, Taxpayer remained the trustee of Trust and all trusts created under Trust.

At the time of Decedent's death, Decedent was the owner of two Individual Retirement Accounts (IRAs), IRA X and IRA Y and had commenced taking required minimum distributions from these IRAs. IRA X and IRA Y were traditional IRAs. Decedent named Trust as the primary beneficiary of Decedent's IRAs. Following Decedent's death, the assets of IRA X and IRA Y were transferred, via a trustee-to-trustee transfer, to IRA Z, a beneficiary IRA established solely to receive a transfer from another IRA after the death of the IRA owner. IRA Z is a traditional IRA established for the benefit of Trust as beneficiary of Decedent.

Under _____ of Trust's terms, upon the death of Decedent and the disposition of Decedent's personal property, the remainder of Trust's property, including Decedent's IRAs, was allocated to the Survivor's Trust.

_____ of Trust provides that Taxpayer may serve as the sole trustee of the Survivor's Trust and may remove and replace the trustee of Survivor's Trust at any time, with or without cause. _____ of Trust provides that Taxpayer has the absolute right to amend Survivor's Trust. This right may only be exercised by Taxpayer.

_____ of Trust provides that to the extent any of Decedent's retirement plans (including IRAs) are allocated to Survivor's Trust, the trustee shall hold this property in a separate share of Survivor's Trust during Taxpayer's lifetime. The trustee is directed to administer the separate share in accordance with all the relevant Trust provisions. Taxpayer may not amend the terms of the separate share, and the provisions pertaining to distributions during Taxpayer's incapacity do not apply to the separate share. The Trust directs the trustee of Trust to distribute as much of the principal and accumulated income of the separate share to the main share of the Survivor's Trust as Taxpayer directs in writing. This right may be exercised only by Taxpayer.

Under _____ of Trust, with respect to a retirement plan (including an IRA) that is allocated to the Survivor's Trust, Taxpayer has the right to distribute the plan or any part of the plan to Taxpayer.

Taxpayer, as trustee and sole beneficiary of Trust, and pursuant to Taxpayer's powers under Trust's terms, wishes to roll over the proceeds of IRA Z into one or more IRAs in Taxpayer's own name.

Rulings Requested

Based on the facts and representations, the following rulings were requested:

- 1) Taxpayer is eligible to roll over the Decedent's IRAs/the Inherited IRA distribution to one or more IRAs established and maintained in Taxpayer's own name pursuant to section 408(d)(3)(A)(i) of the Code, provided that the rollover occurs no later than the 60th day following the day the proceeds of Decedent's IRAs are distributed.

2) Taxpayer will not be required to include in Taxpayer's gross income for federal income tax purposes for the calendar year in which the distribution and rollover occur, the amount distributed from Decedent's IRAs/the Inherited IRA and timely rolled over into the IRA(s) established and maintained in Taxpayer's name.

Law

Section 408(d)(1) of the Code 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 in the manner provided under section 72.

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 the payment or distribution is received; 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) provides that amounts from an inherited IRA cannot be rolled over into another IRA. Under Section 408(d)(3)(C)(ii), an IRA is treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual, and such individual is not the surviving spouse of the other individual.

Section 408(d)(3)(D) permits rollovers of amounts less than the entire amount in an IRA account.

Section 408(d)(3)(E) provides that amounts distributed as required minimum distributions are not permitted to be rolled over pursuant to section 408(d)(3).

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. 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.

Section 408A(d)(3) of the Code contains a special rule that applies for a rollover to a Roth IRA from a non-Roth IRA, which provides in part that, notwithstanding section 408(d)(3), there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution.

Analysis

Generally, if a decedent's IRA proceeds pass through a third party, for example, a trust, 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, and such surviving spouse will not be eligible to roll over the IRA proceeds into the spouse's own IRA.

However, the general rule will not apply if no third party can prevent the surviving spouse from receiving the proceeds of the IRA and from rolling over the proceeds into the surviving spouse's own IRA. In this case, Taxpayer is the sole beneficiary of Trust and, under Trust's terms Taxpayer can remove and replace the trustees of Survivor's Trust at any time and for any reason. In addition, Taxpayer can direct the distribution of the entire separate share to Taxpayer, including IRA Z. Therefore, Taxpayer is effectively the individual for whose benefit IRA Z is maintained.

Because Taxpayer is the surviving spouse of Decedent, the inherited IRA rules of section 408(d)(3)(C) do not prevent a rollover.

With respect to your first ruling request, Taxpayer is permitted to roll over the IRA Z proceeds received by Taxpayer to an IRA set up and maintained in Taxpayer's name pursuant to section 408(d)(3)(A)(i), provided the rollover occurs no later than the 60th day from the day the proceeds are paid from IRA Z.

With respect to your second ruling request, as set forth in the preceding paragraph, Taxpayer is permitted to roll over a distribution from IRA Z to an IRA set up and maintained in Taxpayer's name. Therefore, except in the case of a rollover to a Roth IRA, Taxpayer will not be required to include in Taxpayer's gross income any portion of the IRA Z proceeds timely rolled over to an IRA set up and maintained in Taxpayer's name.

Rulings

Thus, with respect to your rulings requested, we conclude as follows:

1. Except with respect to any portion of a distribution that is a required minimum distribution, Taxpayer is eligible to roll over the proceeds of IRA Z to an IRA set up and maintained in Taxpayer's 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 IRA Z are distributed.

2. Except in the case of a rollover to a Roth IRA, Taxpayer will not be required to include in gross income any portion of the proceeds distributed from IRA Z that are timely rolled over to an IRA set up and maintained in Taxpayer's name.

This letter assumes that IRA X, IRA Y, and IRA Z satisfy the requirements of section 408 at all relevant times.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement, as specified in Rev. Proc. 2022-1, 2022-1 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 upon 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 continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2022-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

This letter 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.

Sincerely,

/s/ Neil Sandhu

Neil Sandhu
Senior Technician Reviewer, Qualified Plans
Branch 1
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: