

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:EEE:EB:QP1
PLR-108017-23
Date: August 31, 2023

Legend:

Decedent	=
Taxpayer	=
Trust	=
IRA U	=
IRA V	=
IRA W	=
IRA X	=
IRA Y	=
IRA Z	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
A %	=

Dear :

This is in response to a request for a letter ruling under sections 408(d)(1) and (d)(3) of the Internal Revenue Code, submitted on your behalf by your authorized representative in correspondence dated April 6, 2023, and updated by correspondence dated August 4, 2023.

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 5. During their joint lives, Decedent executed Trust on Date 1, naming Decedent and Taxpayer as trustees of Trust. Decedent amended Trust on Date 2, Date 3, and Date 4.

At the time of Decedent's death, Decedent was the owner of four traditional Individual Retirement Accounts (IRAs), IRA U, IRA V, IRA W, and IRA X. Decedent died before Decedent's required beginning date.

Decedent's will, dated Date 4, named Taxpayer as the sole executor. On Date 6, Decedent's will was probated and Taxpayer was appointed as sole executor of Decedent's estate.

Under the terms of Decedent's will, the residue of Decedent's estate transferred to Trust. Under the terms of Trust, as amended on Date 4, Taxpayer is the beneficiary of A% of a specified residue of Trust, which residue includes IRA U, IRA V, IRA W, and IRA X but excludes other specified assets.

After Decedent's death, the assets of IRA U, IRA V, IRA W, and IRA X were transferred, via a trustee-to-trustee transfer, to IRA Y, a beneficiary IRA established solely to receive a transfer from another IRA after the death of the IRA owner. IRA Y is a traditional IRA established for the benefit of Decedent's estate as beneficiary of Decedent. IRA Y has since been retitled as a traditional IRA established for the benefit of Trust as beneficiary of Decedent, and is now IRA Z.

As sole executor of Decedent's estate and sole trustee of Trust, Taxpayer intends to make a partial distribution from IRA Z in an amount no more than A% of the specified residue of Trust to Taxpayer in satisfaction of Trust's outright and direct allocation to Taxpayer of A% of the specified residue of Trust and, within 60 days of receipt, roll over the distribution to one or more IRAs held in Taxpayer's name.

Requested Rulings

Based on the above facts and representations, you, through your authorized representative, request the following rulings:

- 1) Taxpayer is eligible to roll over the distribution from IRA Z to Taxpayer into one or more IRAs established and maintained in Taxpayer's name, provided the rollover occurs no later than the 60th day after the proceeds of IRA Z are distributed.
- 2) Taxpayer is not required to include as income for federal income tax purposes for the year in which the distribution from IRA Z is made any portion of the proceeds that were distributed from IRA Z and subsequently and timely rolled over into an IRA 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 spouse's own IRA. In this case, Taxpayer is the sole executor of the estate and sole trustee of Trust, and Taxpayer has the unrestricted right to A% of a specified residue of Trust. Under these circumstances, no third party can prevent the surviving spouse, as sole executor and sole trustee, from receiving the proceeds of IRA Z up to the amount of A% of the specified residue of Trust in satisfaction of the spouse's mandatory share and then rolling over the proceeds into the spouse's own IRA. 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, that are not in excess of A% of the specified residue of Trust, received by Taxpayer to an IRA set up and maintained in Taxpayer's name pursuant to section 408(d)(3)(A)(i), provided that 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 that are not in excess of A% of the specified residue of Trust and timely rolled over to an IRA set up and maintained in Taxpayer's name.

Rulings

Thus, with respect to your ruling requests, 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 that are not in excess of A% of the specified residue of Trust 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 that are not in excess of

A% of the specified residue are distributed on Taxpayer's behalf.

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 that are not in excess of A% of the specified residue of Trust distributed from IRA Z and that are timely rolled over to an IRA set up and maintained in Taxpayer's name.

This letter assumes that IRA U, IRA V, IRA W, IRA X, IRA Y, and IRA Z satisfy the requirements of section 408 at all relevant times. It also assumes that the rollover IRA or IRAs set up by Taxpayer will 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 penalties of perjury statement executed by Taxpayer, as specified in Rev. Proc. 2023-1, 2023-1 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. 2023-1, § 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,

Amy S. Moskowitz
Senior Technician Reviewer
Qualified Plans Branch 3
Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: