

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:EEE:EB:QP3

PLR-109816-23

Date:

October 31, 2023

### Legend

Taxpayer	=
Decedent	=
Trust	=
Retirement Plan	=
IRA 1	=
IRA 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year X	=
Age A	=
Age B	=

Dear :

This is in response to a letter ruling request under section 408(d) of the Internal Revenue Code (Code), submitted on your behalf by your authorized representative by letter dated , and supplemented by correspondence dated , and .

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

On Date 1, Decedent established an IRA (IRA 1) with a custodian.

On Date 2, Decedent and Taxpayer established Trust as part of their estate plan. Taxpayer and Decedent were named as trustees, each of whom could act

independently of the other to exercise any powers granted to a trustee. Either trustee could withdraw or distribute any property from Trust at any time.

In Year X, Decedent rolled over a distribution from Decedent's 401(k) retirement plan to IRA 1.

On Date 3, Decedent passed away at Age A before any required minimum distributions (RMDs) were required to begin under section 401(a)(9). Taxpayer was married to Decedent on Date 3. Taxpayer was Age B on Date 3.

On Date 4, IRA 1 was paid to an inherited IRA (IRA 2) established for Trust.

On Date 5, Trust was restated to reflect Decedent's death. Taxpayer is the sole trustee of Trust, as restated, and has the authority to distribute all of the trust assets to Taxpayer during Taxpayer's lifetime.

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

1. Taxpayer, as surviving 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 Taxpayer's own name pursuant to Code 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.

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 (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 IRA 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 sixtieth day after the day on which the individual 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 sixtieth 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 gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) provides 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 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 IRA passed to Trust upon Decedent's death. Under these circumstances, Taxpayer, as Decedent's surviving spouse, is not permitted to treat the IRA as Taxpayer's own because Trust was the named beneficiary of Decedent's IRA. But because Taxpayer is the sole trustee and primary beneficiary of Trust during Taxpayer's lifetime and has the authority to distribute all of the trust assets to the Taxpayer, 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 IRA's proceeds, Taxpayer 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 Taxpayer's name.

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

1. Taxpayer, as Decedent's surviving 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 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 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.

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 on Taxpayer's behalf by Taxpayer's authorized representative and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2023-1, 2023-1 I.R.B. 1, section 7.01(16)(b). 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. 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, section 11.05.

Sincerely,

John T. Ricotta  
Branch Chief  
Qualified Plans Branch 3  
Office of the Associate Chief Counsel  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)

cc: