Internal Revenue Service

Department of the Treasury

199937055

Washington, DC 20224

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Person to Contact:

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Telephone Number:
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Refer Reply to: ID#*********
(202) 622-****

Date:
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JUN 24 1999

Legend:

Taxpayer A = **********
Taxpayer B = **********
State A = *********
IRA X = **********
****
IRA Y = **********
****
IRA Z = **********
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Dear M**********

This is in response to a ruling request dated December 4, 1998, as supplemented by correspondence dated May 10, 1999, submitted on your behalf by your authorized representative, regarding the federal tax treatment of certain transactions described below.

The following facts and representations have been submitted on your behalf:

Taxpayer A is married to Taxpayer B and resides in State A. Taxpayer A's date of birth is August 27, 1927. Taxpayer A owns IRA X and IRA Y, Individual Retirement Arrangements which were established pursuant to section 408 of the Internal Revenue Code. IRAs X and Y are attributable to a rollover of Taxpayer A's account balance from an employer-sponsored plan, and as of January 31, 1999, IRA X had an account balance of $659,320.35 and IRA Y had an account balance of $606,604.86. Taxpayer B's date of birth is July 4, 1925. Taxpayer B has established IRA Z, a spousal IRA; however, no amounts have as yet been transferred thereto.

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Taxpayer A and Taxpayer B have executed an estate plan which includes a marital property agreement and a joint revocable living trust, among other documents. The parties' marital property agreement and estate plan provide as follows:

> 1. Taxpayer A and Taxpayer B have classified IRA X and IRA Y as marital property, so that each spouse now owns an undivided one-half interest in IRAs X and Y. IRA Z has been classified as Taxpayer B's individual property by the marital property agreement;
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> 2. Taxpayer A and Taxpayer B have agreed to sever IRA X and IRA Y into two separate equal shares, one which represents Taxpayer A's marital property interest and the other which represents Taxpayer B's marital property interest;
>
> 3. If a favorable ruling is issued by the Service, then after division, Taxpayer B will transfer her interest in IRA X and IRA Y to IRA Z. The balance of IRAs X and Y will thereafter be classified as Taxpayer A's individual property under State A law and the marital property agreement;
>
> 4. The beneficiary designation of IRA Z names Taxpayer B's children and then Taxpayer A as primary and secondary beneficiaries, respectively; and,
>
> 5. After it is funded, Taxpayer B will direct the custodian of IRA Z to make annual distributions from IRA Z during her lifetime based on her and the oldest child's joint life expectancies, subject to the minimum distribution incidental death benefit rules. For this purpose, neither life expectancy will be recalculated. These distributions will commence on Taxpayer B's required beginning date.

It is further represented that Taxpayer B has a marital property interest in IRA X and IRA Y under State A law. Upon receipt of a favorable ruling from the Service, it is proposed that Taxpayer B's existing ownership interest in IRA X and IRA Y will be transferred to IRA Z by means of a direct custodian-to-custodian transfer.

Based upon the foregoing, your authorized representative has requested rulings that:

1. Taxpayer B may have a community property interest in Taxpayer A's IRA X and IRA Y to the extent the existence of that interest is consistent with State A law;

2. Reclassification of IRA X and IRA Y as marital property is not considered, pursuant to a marital property agreement, a taxable distribution for purposes of section 408(d)(1) of the Code;

3. The transfer of Taxpayer B's marital property interest in IRA X and IRA Y to IRA Z does not constitute a taxable distribution for purposes of section 408(d)(1) of the Code;

4. The transfer of Taxpayer B's marital property interest held by IRA X and IRA Y to IRA Z is permissible, and that such transfer is not barred by the anti-alienation rules of section 401(a)(13) of the Code; and,

5. After the transfer of Taxpayer B's interest in IRA X and IRA Y to IRA Z, minimum distributions from IRA Z can thereafter be taken based on the joint life expectancy of Taxpayer B and her oldest child in accordance with the minimum distribution incidental benefit rule.

With respect to ruling request number one, pursuant to section 6.02(1) of Revenue Procedure 99-4, 1999-1 I.R.B. 115, 124, in employee plans matters, the national office issues letter rulings on proposed transactions and on completed transactions involving only those specific sections of the Code as enumerated therein. Section 408(g) of the Code provides that section 408 shall be applied without regard to any community property laws.

At issue herein is whether section 408(g) of the Code preempts Taxpayer B's community interest under State law in IRA X and IRA Y. The relationship of section 408(g) and the community property laws of State A must be evaluated against Congress' intent in enacting the section.

The House Committee Report set forth in H.R. Rep. No. 93-779, 93rd Cong., 2nd Sess., 1974-3 C.B. 244, 363, provides that community property laws are not to apply with respect to deductions taken for contributions made to IRAs. This provision clearly applies only to the deduction provisions under sections 219 and 220 of the Code. The committee report cites the example that if a husband and wife live in a community property State and only the husband has income, a contribution may be made by the husband based on his earnings even though under the laws of the State one-half of the income belongs to his non-working wife. However, the committee reports make no specific references to State community property laws as they are affected by the provisions under section 408 of the Code.

Section 408(d)(6) of the Code, and the Regulations thereunder, permit an individual's interest in an IRA to be transferred, in whole or in part, to his or her former spouse under a valid divorce decree or a written instrument incident to such divorce without such transfer being considered a taxable transfer. This provision indicates that Congress recognized the effect of State domestic relations law on IRAs.

Because there is no specific language on what effect Congress intended Code section 408(g) to have, and because of the general rule of statutory construction which provides that federal statutes are construed as to not preempt State law unless that was the clear and manifest intent of Congress, we conclude that section 408(g) does not abrogate any substantive rights under State law.

It follows, in the instant case, that the classification of IRA X and IRA Y as community property is clearly a matter to be determined under the laws of State A. Therefore, in response to ruling request one, we conclude that Taxpayer B may have a community property interest in Taxpayer A's IRA X and IRA Y to the extent the existence of that interest is consistent with State A law.

With respect to ruling request number two, section 408(d)(1) of the Code provides, in general, that except as otherwise provided in section 408(d), any amount paid or distributed from 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.

Taxpayers A and B have reclassified IRA X and IRA Y as marital property pursuant to a marital property agreement which is permitted under the laws of State A. This initial reclassification does not provide for any distribution or transfer of assets from IRAs X or Y and does not provide for a change of IRA trustee.

Section 408(d)(1) of the Code generally provides that amounts are to be included in an individual's gross income only when they are actually paid or distributed from an IRA. In the transaction described herein, with respect to the facts pertaining solely to your ruling request number two, there will be a reclassification of individual property into marital property. Such reclassification, alone, is not tantamount to an actual distribution or payment from an IRA. Furthermore, such reclassification will not cause IRA X nor IRA Y to fail to meet the requirements under section 408(a) so as not to be for the exclusive benefit of the involved taxpayer(s).

Thus, with respect to ruling request two, we conclude that reclassification of IRA X and IRA Y as marital property is not considered, pursuant to a marital property agreement, a taxable distribution for purposes of section 408(d)(1) of the Code.

With respect to ruling request number three, as noted above it is proposed that Taxpayer B will, upon receipt of a favorable ruling from the Service, transfer her interest in IRA X and IRA Y to IRA Z, an IRA maintained in Taxpayer B's name. The owner of an IRA account is deemed to be the individual in whose name the account was established. This conclusion is not affected by State law. In any event, even if title does not determine ownership under applicable State law, and even if the IRA owner's spouse's property interests in the IRA are identical to the owner's under applicable State law, distributions from the IRA are to be taxed as if the owner is the sole owner of the IRA. Thus, since amounts are to be included in an individual's gross income when they are paid or distributed from an IRA, as noted above pursuant to section 408(d)(1) of the Code, we conclude with respect to ruling request number three that the transfer of Taxpayer B's marital property interest in IRA X and IRA Y to IRA Z constitutes a taxable distribution for purposes of section 408(d)(1).

With respect to ruling requests number four and five, we note that we concluded above in ruling request number three that a transfer of Taxpayer B's interest in IRA X and IRA Y to IRA Z constitutes a taxable distribution under section 408(d)(1) of the Code. Therefore, we find that ruling requests number four and five are moot.

This ruling is based on the assumption that at all relevant times, IRA X and IRA Y meet the requirements of section 408 of the Code. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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A copy of this ruling letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
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