

Internal Revenue Service

Department of the Treasury

199951046

Uniform Issue List: 408.00-00

Washington, DC 20224

▷ *****

Contact Person:

Telephone Number:

In Reference to:

Date: SEP 29 1999

Legend:

- Individual A = *****
- Individual B = *****
- Custodian C = *****

- IRA X = *****

- State S = *****

Dear

This is in response to a request for letter rulings submitted on August 26, 1998, as supplemented by letters dated January 4, 1999, January 19, 1999, and March 10, 1999, concerning a rollover of funds from one individual retirement account into another individual retirement account under section 408(d)(3) of the Internal Revenue Code ("Code").

The facts and representations on which the request is based are as follows:

Individual A was born on August 7, 1933, and died on April 25, 1998. At her death, Individual A had not attained age 70 1/2. Individual B, who was born on December 2, 1934, is her surviving spouse. At her death, Individual A maintained IRA X with Custodian C. Individual A designated her estate as the beneficiary of IRA X in an IRA beneficiary designation form dated September 9, 1997. No distributions have been made from or

318

contributions made to IRA X after the date of Individual A's death. It is represented that IRA X meets the requirements of section 408(a) of the Code.

Prior to her death, Individual A executed a last will and testament ("Will") dated December 22, 1997, which appointed Individual B as sole executor of Individual A's estate. ITEM VI of Individual A's Will provides an outright marital bequest to Individual B of the smallest amount necessary to reduce the federal estate tax payable by reason of Individual A's death to the lowest possible figure after first taking into account all other property passing to Individual A's surviving spouse and after also taking into account all credits available to Individual A's estate for federal estate tax purposes (as long as the use of any such credit will not increase the death taxes payable on account of Individual A's death). In addition, ITEM VI of Individual A's Will grants her executor the widest discretion in selecting the property to be allocated to this bequest. No death taxes shall be paid from this bequest.

On May 6, 1998, the Will was admitted to probate in State S, and letters testamentary appointed Individual B as the sole executor of Individual A's estate.

ITEM XIII.K of Individual A's Will authorizes Individual B, as sole executor of Individual A's estate, to make distributions in cash or in kind or partly in each.

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, filed with respect to Individual A shows the value of the total gross estate at the date of death at approximately \$6.6 million. Items 3 through 6 of Schedule I show the value of securities in IRA X as approximately \$246,000. Schedule M of the Form 706 applicable to Individual A's estate indicates that the value of the marital bequest computed pursuant to ITEM VI of Individual A's Will is \$950,926.30.

Individual B, as sole executor of Individual A's estate, proposes to fund the marital bequest under ITEM VI of Individual A's Will with, among other assets, the entire IRA X. In particular, all the assets in IRA X would be distributed to Individual A's estate, and those same assets would then be distributed under ITEM VI of Individual A's Will to Individual B, as the surviving spouse of Individual A. Within sixty days after the distribution of IRA X to Individual A's estate, Individual B would contribute those same assets to an IRA established in his own name, which will meet the requirements of section 408(a) of the Code.

As revised by a letter dated January 4, 1999, your authorized representative requests the following rulings.

1. That the distribution of assets comprised of IRA X to Individual A's estate, followed by the distribution of those same assets by Individual A's estate to Individual B as Individual A's surviving spouse in partial satisfaction of the outright marital bequest under

3/9

ITEM VI of the Will, and the contribution by Individual B of those same assets to an IRA established in his own name within sixty days after the distribution of the IRA X to Individual A's estate, as proposed, will qualify as a rollover contribution by Individual B within the meaning of section 408(d)(3) of the Code.

2. That IRA X is not an "inherited IRA" within the meaning of section 408(d)(3)(C) of the Code with respect to Individual B.

3. That the distribution of IRA X will not be includable in the gross income of Individual B under section 408(d)(1) of the Code.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided, 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)(A)(i) of the Code 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 the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he or she receives the payment or distribution.

Code section 408(d)(3)(B) of the Code provides that section 408(d)(3)(A) does not apply to any transfer described in section 408(d)(3)(A)(i) if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in such subparagraph from an IRA which was not includible in his gross income because of the application of section 408(d)(3)(A).

Section 408(d)(3)(C)(i) of the Code 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 (and no amount transferred from such account to another IRA shall be excluded from 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) of the Code 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, Question and Answer A-4(b), of the Proposed Income Tax Regulations provides, in part, that in the case of an individual dying after December 31,

1983, the only beneficiary of the individual who may elect to treat the beneficiary's entire interest in the trust (or the remaining part of such interest if distribution thereof has commenced to the beneficiary) as the beneficiary's own account is the individual's surviving spouse. If the surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A), rather than those of section 401(a)(9)(B).

Section 1.408-8, Q&A-6, of the proposed regulations provides, in pertinent part, that if the surviving spouse of an employee rolls over a distribution from a qualified plan into an IRA, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-4.

Generally, if a decedent's IRA proceeds pass through a third party, e.g., an estate, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from a third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the IRA proceeds into his or her own IRA.

However, in a situation where an estate is the beneficiary of the IRA, the surviving spouse is the sole executor of the estate with sole discretion to allocate and pay estate assets, the surviving spouse as sole executor allocates IRA assets to a marital bequest under decedent's Will, and the surviving spouse is the sole beneficiary of the marital bequest, then for purposes of section 408(d)(3) of the Code, the Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the estate.

Here, Individual B is the surviving spouse of Individual A and the sole executor of Individual A's estate. Individual A's estate is the beneficiary of IRA X which will be distributed to her estate. Individual B, who, as sole executor of Individual A's estate, has the authority and discretion to allocate assets to Individual A's marital bequest, will allocate IRA X to Individual A's marital bequest under ITEM VI of Individual A's Will. All of the assets in IRA X will then be distributed to Individual A's estate, and those same assets will be distributed to Individual B, the beneficiary of said marital bequest. Individual B will then take said IRA X proceeds and contribute them to an IRA, described in Code section 408(a), to be set up and maintained in his name. Under these circumstances, the Service does not believe the general rule should apply.

Accordingly, we conclude as follows:

1. That the distribution of assets comprised of IRA X to Individual A's estate, followed by the distribution of those same assets by Individual A's estate to Individual B as Individual A's surviving spouse in partial satisfaction of the outright marital bequest under ITEM VI of the Will, and the contribution by Individual B of those same assets to an IRA established in his own name within sixty days after the distribution of the IRA X to

321

199951046

Individual A's estate, as proposed, will qualify as a rollover contribution by Individual B within the meaning of section 408(d)(3) of the Code.

2. That IRA X is not an "inherited IRA" within the meaning of section 408(d)(3)(C) of the Code with respect to Individual B.

3. That the distribution of IRA X will not be includable in the gross income of Individual B under section 408(d)(1) of the Code.

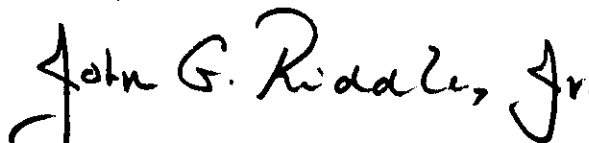
This ruling is based on the assumption that IRA X established by Individual A, and the IRA to be established by Individual B, either meet or will meet the requirements of section 408 of the Code at all times relevant to the transaction described herein. Additionally, it is based upon the assumption that the rollover will meet all the applicable requirements of section 408(d)(3) of the Code.

This ruling is also based on the assumption that Custodian C is authorized to hold IRA assets.

This ruling is directed only to the taxpayer who requested it. Section 6110(k) of the Code provides that it may not be used or cited by others as precedent.

The original and a deleted copy of this letter have been sent to the first authorized representative listed in a power of attorney on file in this office.

Sincerely,



John G. Riddle, Jr.
Chief, Employee Plans
Technical Branch 4

Enclosures:

- Deleted copy of this letter
- Notice of Intention to Disclose, Notice 437

322