200304038

INTERNAL REVENUE SERVICE

OCT 29 2002

Uniform Issue List No. 0408.03-00

T:EP:RA:T4

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Legend:

Individual A = **********

Individual B = **********

Bank C = **********

IRA X = **********

State V = **********

Dear ******:

This is in response to a request for a ruling submitted on January 14, 2002, submitted on your behalf by your authorized representative, concerning the federal income tax treatment of a proposed transfer of funds from one individual retirement account into another individual retirement account under section 408(d)(3) of the Internal Revenue Code.

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

Individual A, whose date of birth was , died on . Her age at the date of death was age 69 years and, she was married, at death, to Individual B. At the time of A's death, A maintained an individual retirement account, IRA X, at Bank C. Individual A had not attained age 70 1/2 and had not yet begun receiving distributions from IRA X. No distributions have been made from IRA X since A's death. Individual A designated her estate as beneficiary of the account. IRA X was included in her estate and Individual B was appointed personal representative of her estate. IRA X has been transferred to A's Estate. Individual A did not leave a will. Her entire net estate will pass by intestate succession under the laws of State V to her spouse B.

Individual B, as surviving spouse disclaimed a portion of the estate, but did not disclaim the interest in IRA X. Therefore, the balance of the estate not disclaimed, including IRA X, passed by intestacy to B, as surviving spouse. Individual B, as surviving spouse and beneficiary of the estate, desires that B, as sole personal representative and administrator of the estate, transfer IRA X maintained by the estate of A at Bank C to an individual retirement account maintained by B at Bank C.

Based on the facts and representations the taxpayer requests a ruling that a transfer from IRA X, maintained in the name of Individual A's Estate at Bank C to an individual retirement account maintained in the name of Individual B the surviving spouse, qualify as a tax deferred transaction within the meaning of section 402(c), and that the transfer would not result in income to either the estate or the surviving spouse in the year of the transfer under section 408(d)(1).

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-5(a), 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-A7, of the proposed regulations provides, in pertinent part, that if the surviving spouse of an employee rolls over a distribution from the deceased spouse's IRA into another IRA, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in section 1.408-8 Q&A A-5.

Generally, if a decedent's IRA proceeds pass through a third party, e.g., a trust or 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, such 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 administrator of the estate and is the sole beneficiary of an intestate estate (except for any non-IRA portion of the estate the spouse has disclaimed), then for purposes of section 408(d)(3) of the Code, the surviving spouse will be treated as having acquired the IRA proceeds from the decedent and not from the estate.

In this case, Individual B is the surviving spouse of Individual A and the administrator and the sole beneficiary (except for any non-IRA portion of the estate the spouse has disclaimed) of A's estate. Individual A's estate is the beneficiary of IRA X. Individual B, who has not disclaimed any portion of IRA X, will transfer all IRA X proceeds to an IRA, described in section 408(a), set up and maintained in B's name.

Accordingly, we conclude that the transfer of all assets from IRA X, maintained in the name of the Individual A at Bank C to an individual retirement account maintained in the name of Individual B, A's surviving spouse, qualifies under section 408(d)(3) of the Code and will not result in an inclusion gross income for either the estate or the surviving spouse, B, in the year of the transfer under section 408(d)(1).

This ruling is based on the assumption that Individual A's IRA X, and the IRA to be established by Individual B, meet the requirements of section 408 of the Code at all times relevant to the transaction described herein, and that the transfer will satisfy all other applicable requirements of section 408(d)(3).

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 as precedent.

This ruling letter was prepared by . He may be contacted at .

The original and a deleted copy of this letter have been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely,

Alan Pipkin
Chief, Employee Plans Technical Branch 4
Tax Exempt & Government Entities

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437