Internal Revenue Service | Department of the Treasury

Washington, DC 20224

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199910067

Contact Person:

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Telephone Number:

In Reference to: OP:E:EP:T:4

Date: DEC 16 1998

Legend:

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

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

Custodian C = **********

IRA X = **********
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IRA Y = **********
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State V = ********

Dear **********:

This is in response to a request for rulings submitted on June 16, 1998, submitted on your behalf by your authorized representative, concerning the federal income tax treatment of a proposed rollover 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 was born on March 22, 1923, and died on August 22, 1997, at age 74. Individual A established an individual retirement account (IRA X) on August 17, 1995, with Custodian C, and named his estate as the primary beneficiary of his IRA X. He began to receive required distributions from the IRA X pursuant to sections 401(a)(9)(A) and 408(a)(6) of the Code. The most recent distribution was made in January 1997, and no distributions have been made since Individual A's death.

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Individual A signed his Last Will and Testament, ("Will") on October 31, 1989, and Individual B, his spouse, was named the Executrix of Individual A's Will. His surviving spouse, Individual B, was born on February 14, 1926.

Section 5 of Individual A's Will provides for a marital share to Individual B. The bequest is a fractional share of the residuary estate, of which the numerator is the amount by which the maximum marital deduction exceeds the total of any other amounts allowed as marital deduction, reduced by an amount, needed to increase the taxable estate to the largest amount which will, after allowing for the unified credit against federal estate tax, but no other credit, result in no federal estate tax being payable by the estate, and of which the denominator is the value of the residuary estate. Section 5 also provides that the Executrix shall have the power to select the assets to satisfy this bequest.

Section 6 of the Will provides for a residuary trust for the remainder of the residuary estate, after Section 5 is funded. The residuary trust provides for net income for Individual B's life, and after her death the remaining principal and income will be distributed to Individual A's children. On November 21, 1997, Individual B disclaimed her interest in specific assets valued at the amount that would have passed to the residuary trust, including her interest as a beneficiary of the residuary trust. As a result of the disclaimer, assets in the amount of the decedent's remaining estate tax exemption amount passed to the children of the decedent outright, and the entire residuary estate, other than amounts required to satisfy funeral, administrative expenses and debts of the decedent, passed to Individual B pursuant to Section 5.

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 $1.5 million. Items 17 through 30 of Schedule B show the value of securities in IRA X as $414,245, and item 5 of Schedule C shows the value of the money market fund in IRA X as $6,816, or a total value of approximately $421,000. Schedule M, shows the maximum amount of the marital share of the residuary estate passing to the spouse

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pursuant to Section 5 of the Will to be approximately $646,000.

The assets in IRA Y held at Custodian C, of which the beneficiary is the decedent's estate, were disclaimed by Individual B, and your representative has asserted that the assets of IRA Y were distributed to the children of Individual A. Part 4 of Form 706 lists four children of Individual A.

As Executrix of the estate of Individual A, Individual B proposes to allocate the entire proceeds of IRA X to the marital share of the estate provided for in Section 5 of the Will. Individual B will distribute the entire proceeds to the estate as named beneficiary, and then Individual B will have the estate distribute the entire proceeds to herself, as the surviving spouse entitled to receive the marital share pursuant to Section 5 of Individual A's Will. Within 60 days after the distribution of the IRA X to the estate, Individual B will contribute the entire proceeds of the IRA X to an IRA established in her own name, which IRA will meet the requirements of section 408(a) of the Code.

Based on the above facts and representations, the following rulings are requested:

1. That IRA X, all of which is allocated to the marital bequest to Individual B under Section 5 of Individual A's Will, is not an inherited IRA as to Individual B within the meaning of section 408(d)(3)(C) of the Code.

2. That the rollover by Individual B of the proceeds of IRA X allocated to the marital bequest under section 5 of the Will satisfies the requirements of sections 408(d)(3)(A) and 408(d)(3)(B) of the Code.

3. That none of the proceeds of the IRA X will be required to be included in Individual B's gross income in the year of the distribution pursuant to section 408(d)(1) and section 408(d)(3) of the Code.

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.

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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).

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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.

There is no requirement under the Code or the Income Tax Regulations promulgated thereunder, that a surviving spouse not have reached her required beginning date in order for such individual to claim an IRA of a decedent as her own.

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, 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 executrix with sole discretion under the decedent's will to allocate assets between a marital bequest and a residuary trust, the surviving spouse allocates IRA assets to the marital bequest, and the surviving spouse is the sole beneficiary of the marital bequest, outright and in fee, 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.

In this case, Individual B is the surviving spouse of Individual A and the sole executrix of Individual A's estate. Individual A's estate is the beneficiary of his IRA X which will be distributed to the estate. Individual B, who as executrix of Individual A's estate has the authority to allocate assets among Individual A's testamentary bequests, will allocate Individual A's IRA X to the marital bequest described in Section 5 of Individual A's Will. Individual B, the beneficiary of said marital bequest, will then take said IRA X proceeds and contribute them to an IRA, described in Code section 408(a), set up and maintained in her name. Under these circumstances, the Service does not believe the general rule should apply.

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Accordingly, we conclude as follows:

1. That IRA X, all of which is allocated to the marital bequest to Individual B under Section 5 of the Will is not an inherited IRA as to Individual B within the meaning of section 408(d)(3)(C) of the Code.

2. That the rollover by Individual B of the proceeds of IRA X allocated to the marital bequest under section 5 of the Will satisfies the requirements of sections 408(d)(3)(A) and 408(d)(3)(B) of the Code.

3. That none of the proceeds of the IRA X will be required to be included in Individual B's gross income in the year of the distribution pursuant to sections 408(d)(1) and 408(d)(3) of the Code.

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 rollover will meet all the applicable requirements of section 408(d)(3).

No opinion is expressed with respect to the IRA Y assets which were disclaimed by Individual B.

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

Sincerely,

John G. Riddle, Jr.

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

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