199934024

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 408.03-01
9999.98-00

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Contact Person:

Telephone Number:

In Reference to:

Date:
JUN 4 1999

Legend:

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

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

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

IRA X = **********
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Bank N = **********
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State T = *********

Trust W = **********
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Dear **********:

This is in response to a request for letter rulings submitted on June 19, 1998, as supplemented by letters dated August 21, 1998, September 29, 1998, December 14, 1998, December 18, 1998, February 26, 1999, and May 13, 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.

142

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

Individual A was born on March 3, 1943, and died on December 29, 1997, at age 54. Individual B is his surviving spouse. On January 3, 1993, Individual A established IRA X with Custodian C with funds rolled over from a qualified plan. Individual A named his estate as the beneficiary of IRA X.

On January 26, 1996, Individual A executed a will and testament ("Will") which he declared to be his last will revoking all prior wills and codicils. Subparagraph 2.1.1 of the Will appoints Individual B as executor. Subparagraph 2.1.2 of the Will designates Individual B and Bank N as trustees. Subparagraph 10.1.4 of the Will defines the executor to mean my executor and trustee to mean my trustee or trustees. The Will, in part, defines "Fiduciary" to include executor and trustee.

Individual A's Will provided for a credit shelter trust ("Trust W"), with the residuary to be distributed outright to the surviving spouse. Paragraph 5.1 of the Will gives to the trustee of Trust W the largest amount that can pass free of Federal Estate taxes, utilizing the unified credit, determined under Subparagraph 9.2.1., and gives to Individual A's wife the residuary estate. Subparagraph 9.2.1. of the Will provides that the Trustee is to receive the largest amount that can pass free of the Federal estate tax using the unified credit, after deducting expenses.

Subparagraph 2.3.1 and paragraph 6.3 of Individual A's Will confers on his fiduciary broad latitude in exercising discretion in valuing, selecting, allocating and distribution of property or the charge of expenses against the estate.

Your authorized representative has asserted on your behalf that, pursuant to the laws of State T, the executrix of the estate of Individual A determines which assets in said estate are to be used to fund Trust W and which are to pass to Individual A's residuary estate.

The estate of Individual A is the beneficiary of Individual A's interest in IRA X.

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No distribution had been made from IRA X to Individual A. Individual B, as executrix of the estate of Individual A, has received a single sum distribution of the full amount standing in IRA X at Individual A's death. Individual B subsequently transferred the proceeds of IRA X to herself as the residuary beneficiary of Individual A's estate. Individual B, as the residuary beneficiary of Individual A's estate, then transferred the IRA X proceeds into an IRA set up and maintained in her name. The IRA proceeds from IRA X were transferred into the IRA set up in Individual B's name within 60 days of the date on which they were distributed from IRA X to Individual A's estate.

Based on the above facts and representations, your authorized representative requests the following rulings on your behalf:

1. That the proceeds of IRA X of Individual A that were transferred to Individual B under the provisions of the Will of Individual A will be treated as being paid directly from IRA X to Individual B. As a result, Individual B will be treated as the payee or distributee of said IRA X proceeds for purposes of Code section 408(d)(1);

2. That IRA X of Individual A did not represent an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to Individual B; and

3. That Individual B was eligible to roll over the distribution of Individual A's IRA X proceeds into an IRA set up and maintained in her own name pursuant to Code section 408(d)(3) as long as said rollover occurred within 60 days of the date the proceeds were distributed from IRA X to the estate of Individual A. Furthermore, if Individual B accomplished said rollover, she will not be required to include the IRA X distribution in gross income for federal income tax purposes for the year in which said distribution was made.

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.

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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

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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).

Generally, if a decedent's IRA proceeds pass through a third party, e.g., an estate or a trust, 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 executrix of the estate with sole discretion to allocate and pay estate assets, the surviving spouse allocates IRA assets to the residuary estate, under the decedent's Will, and the surviving spouse is the sole beneficiary of the residuary estate, 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 executrix of Individual A's estate. Individual A's estate is the named beneficiary of IRA X which was distributed to his estate. Individual B, who, as executrix of Individual A's estate, had the authority and discretion to allocate assets between Individual A's testamentary bequests, allocated IRA X to Individual A's residuary estate under Section 5.1 of Individual A's Will. Individual B, the beneficiary of said residuary estate, took said IRA X proceeds and contributed 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.

Accordingly, we conclude as follows:

1. That the proceeds of IRA X of Individual A that were transferred to Individual B under the provisions of the Will of Individual A will be treated as being paid directly from IRA X to Individual B. As a result, Individual B will

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be treated as the payee or distributee of said IRA X proceeds for purposes of Code section 408(d)(1);

2. That IRA X of Individual A did not represent an inherited IRA within the meaning of section 408(d)(3)(C) of the Code with respect to Individual B; and

3. That Individual B was eligible to roll over the distribution of Individual A's IRA X proceeds into an IRA set up and maintained in her own name pursuant to Code section 408(d)(3) as long as said rollover occurred within 60 days of the date the proceeds were distributed from IRA X to the estate of Individual A. Furthermore, if Individual B accomplished said rollover, she will not be required to include the IRA X distribution in gross income for federal income tax purposes for the year in which said distribution was made.

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

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.

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

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