Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:T:1

Date:
JUL 28 1999

Legend:

Taxpayer A =
Taxpayer B =
IRA X =

Trust M =

Trust N =
Trust O =

Dear :

This letter is in response to a ruling request dated February 10, 1999, submitted on your behalf by your authorized representative, concerning a transfer of an Individual Retirement Arrangement ("IRA").

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

In September, 1986, Taxpayer A, established IRA X. On July 12, 1976, Taxpayer A established Trust M naming himself as the sole beneficiary of the Trust during his life. Trust M was restated in its entirety on November 16, 1992, and again on January 27, 1994. On February 3, 1993, Trust M was named the sole beneficiary of IRA X.

Taxpayer A, who was born on August 6, 1920, died on March 23, 1998, at the age of 77. He is survived by his spouse, Taxpayer B, who has not attained age 70&1/2. Upon the death of Taxpayer A, Article 3 of Trust M provides that it will be divided pursuant to a formula into two trusts,

305

identified as the Marital Trust (Trust N) and the Family Trust (Trust O). That portion of Trust M which is to be allocated to Trust N will equal the maximum estate tax marital deduction for federal estate tax purposes less the total of marital deductions allowed for property which pass to Taxpayer B as the surviving spouse (other than pursuant to Trust N) and less the amount necessary to increase the taxable estate of Taxpayer A to the largest amount that, will, after the allowance of all available credits against the federal estate tax (to the extent that such credits does not increase any state death taxes) result in no increase in the federal estate taxes otherwise payable by the estate of Taxpayer A. The balance of Trust M will be allocated to Trust O.

Taxpayer B is the sole beneficiary of Trust N and is the oldest beneficiary of Trust O. Taxpayer A was receiving minimum required distributions under section 401(a)(9) of the Internal Revenue Code ("Code") from IRA X based upon the joint life expectancies of Taxpayers A and B and based upon the recalculation method.

Upon Taxpayer A's death, IRA X had an account balance of approximately $3,262,000. In addition to such assets, Trust M had other assets totalling approximately $4,720,000. The amount to be allocated to Trust N and the funding of it was done pursuant to a fractional formula in Article 3 of Trust M. The formula works in such a way that there would always be sufficient assets to fully fund Trust N. The formula would allocate approximately $625,000 from $4.7 million to Trust O and all remaining assets would then be allocated to Trust N including the IRA assets themselves.

Section 4.1A of Trust M provides that all of the net income of Trust N will be distributed to Taxpayer B. Section 4.1C of Trust M provides that Taxpayer B has the right at any time to withdraw all of the principal of Trust N. Section 4.1D of Trust M provides that Taxpayer B has a general power of appointment by which she can appoint any assets which remain in Trust N at the time of her death to any person.

Paragraph 15(a) of Section 6.1 of Trust M provides that the Trustee may make distribution or division of principal in cash or in kind, or both, at values current at the date of distribution and without any requirement that each item be distributed or divided ratably.

306

Section 10.1A of Trust M provides that Taxpayers A and B shall serve as Co-Trustees. Section 10.1B & C of Trust M provides that upon the death of Taxpayer A, Taxpayer B would serve as a Co-Trustee with any other designated by her. At the time of the death of Taxpayer A, no other person was serving as a Trustee other than Taxpayer B. Taxpayer B is currently the sole Trustee of Trust M.

Taxpayer B, as the sole Trustee, has elected to allocate deceased Taxpayer A's entire IRA to Trust N. Taxpayer B, as the sole beneficiary of Trust N, intends to elect to withdraw all of the assets which would be allocated to Trust N, including the deceased Taxpayer A's IRA. Taxpayer B intends to establish an IRA in her own name with the assets of Taxpayer A's IRA. This will be accomplished by a trustee-to-trustee transfer.

Based on the foregoing facts and representations, you request the following ruling: Since Taxpayer B is the sole Trustee of Trust M, has the power to allocate non pro rata assets between Trust N and Trust O, has elected (as Trustee) to allocate all of Taxpayer A's IRA X to Trust N, Taxpayer B may, pursuant to Code section 408(d)(3), pay the entire amount of the deceased Taxpayer A's IRA X to an IRA maintained on her behalf without including the amount of the IRA distribution in her gross income for the year of distribution or in the income of Trust M, Trust N, or Trust O. The foregoing transfer of funds may be made directly from deceased Taxpayer A's IRA X to Taxpayer B's IRA.

Section 408(d)(1) of the Code provides, in general, that any amount paid or distributed from an IRA shall be includible in gross income by the payee or distributee, as the case may be, in the manner provided under Code section 72.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that in the absence of payment or distribution, a transfer of funds in a participant's IRA from the IRA trustee to a new IRA trustee would not result in a payment or distribution includible in the gross income of the participant as provided for under Code section 408(d)(1) and would not be a rollover contribution as provided for in Code section

408(d)(3)(A)(i) because such funds are not within the direct control and use of the participant. This conclusion is applicable whether the trustee initiates the transfer of funds or the IRA participant directs the transfer of funds.

Section 408(d)(3)(A)(i) provides, in part, that 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 is paid into an IRA for the benefit of such individual not later than 60 days after the date on which that individual received the distribution.

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/her gross income because of the application of section 408(d)(3)(A).

Section 408(d)(3)(E) of the Code provides, generally, that section 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under either subsection (a)(6) or (b)(3).

Section 408(d)(3)(C)(i) of the Code provides, in 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 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 states that an IRA shall be treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual and such individual was not the surviving spouse of such other individual.

Thus, pursuant to section 408(d)(3) of the Code, a surviving spouse who acquires IRA proceeds from and by reason of the death of his/her spouse, may elect to transfer the proceeds over into his/her own IRA.

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

However, if a trust is the beneficiary of an IRA, and the surviving spouse is sole trustee of the trust with power to allocate, and, as beneficiary has the right to demand payment of trust principal at any time and for any reason, then for purposes of section 408(d)(3) of the Code, if the trustee of the trust pays to the surviving spouse, as beneficiary of the trust, proceeds of an IRA which constitute trust principal, the Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the trust.

In this case, Taxpayer A maintained IRA X at the time of his death. Trust M was the named beneficiary of IRA X at the time of Taxpayer A's death, and Taxpayer B, the surviving spouse, is the sole trustee of Trust M and is the sole beneficiary of Trust N with the power under the terms of Trust N to demand payment of part or all of the Trust N principal.

Based on the foregoing, we conclude that it is appropriate to treat Taxpayer B as the beneficiary of Taxpayer A's IRA X as that term is used in Code section 408(d)(3).

Accordingly, we conclude that the transfer of all or a portion of IRA X to Taxpayer B's IRA satisfies the requirements of Code section 408(d)(3) and will not be included in Taxpayer B's gross income or the income of Trusts M, N, or O, in the year of the transfer under Code section 408(d)(1).

This ruling is based on the assumption that both IRA X and Taxpayer B's IRA meet the requirements Code section 408.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

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

Sincerely yours,

(Signed) John Swieca

John Swieca,
Chief, Employee Plans
Technical Branch 1

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

cc: