Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:
March 10, 2000

M:

N:

Trust A:

Trust B:

Trust C:

IRA 1:

IRA 2:

a:

b:

Dear

This letter responds to M's request, perfected December 21, 1999, for a ruling under § 691 of the Internal Revenue Code. M represents the following facts.

M is the surviving spouse of N, who died on a. At the time of his death, N owned IRAs 1 and 2. Trust A was the beneficiary of both IRAs.

M and N were the grantors and original co-trustees of Trust A. At the death of N, M became the sole trustee of Trust A.

Trust A is to continue after N's death until all the assets have been allocated and distributed to two subtrusts, Trusts B and C. M is to serve as the trustee for Trusts B and C, with sole authority to make allocations between them.

The income of Trust B is to be paid to, or for the use of, M during her lifetime. The principal of Trust B is to be distributed to any person, including M, and in any manner as M may direct during her lifetime. Upon M's death, trust principal and any accumulated income is to be distributed as directed by M's will. M may amend or revoke Trust B at any time.

As the sole trustee of Trust A, M proposes to allocate the assets of IRAs 1 and 2 to Trust B. Then, pursuant to her general power of appointment over trust principal, M intends to direct the custodians of the IRAs to transfer the assets of the IRAs into IRAs set up and maintained by M. These transfers were to have occurred in b.

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includible in respect of the tax period in which falls the date of his death or a prior period shall be included in the gross income, for the tax year when received, of:

> (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;
>
> (B) the person, who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or
>
> (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 1.691(a)-1(b) of the Income Tax Regulations provides that the term "income in respect of a decedent" refers to those amounts to which a decedent was entitled as gross income but that were not properly includible in computing his taxable income for the tax year ending with his date of death or for a previous tax year under the method of accounting employed by the decedent.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any deductible contributions, is income under § 408(d)(1) and is income in respect of a decedent under § 691(a)(1) that is includible in the gross income of the

beneficiary for the tax year the distribution is received. The revenue ruling further holds that if the designated beneficiary is the owner's surviving spouse, the surviving spouse would be permitted, under § 408(d)(3)(C), to roll the distribution over into another IRA and avoid current inclusion under § 691(a)(1).

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received the right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or person, as the case may be, for the tax period in which the transfer occurs, the fair market value of the right at the time of the transfer plus the amount by which any consideration for the transfer exceeds the fair market value. For purposes of § 691(a)(2), the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of that person to receive the amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 676(a) provides that a grantor will be treated as the owner of any portion of a trust, whether or not he is treated as the owner under any other provision of part I of subchapter J, where at any time the power to revest in the grantor title to that portion is exercisable by the grantor or a nonadverse party, or both.

Rev. Rul. 85-13, 1985-1 C.B. 184, holds that if a grantor is treated as the owner of an entire trust, the grantor is the owner of the trust's assets for federal income tax purposes. Therefore, a transfer of trust assets to a grantor who owns the entire trust is not recognized as a sale for federal income tax purposes.

In a private letter ruling to M dated October 1, 1999, regarding the same proposed transaction, the Service concluded, for purposes of § 408, that–

> [I]n a case where a surviving spouse is the sole trustee of the trust with the sole authority to allocate trust assets between two subtrusts, the surviving spouse, as sole trustee allocates all of decedent's IRAs to a marital subtrust under the trust, and the surviving spouse is the sole beneficiary of said subtrust with the power to demand payment of as portion or all of the subtrust's assets, the surviving spouse will be treated as having received the IRA proceeds from the decedent and not from the trust.

As such, the Service ruled that M is treated as the payee and distributee of the IRAs for purposes of § 408(d)(1) and (3) and, therefore, to the extent that the assets of the IRAs

are directly transferred to IRAs set up and maintained in the name of M, the transferred amounts will not be included in M's gross income for the year in which transferred.

After applying the applicable law to the facts and representations of this ruling request, we conclude that M, as the grantor, sole trustee, and beneficiary of Trust B, with the power to amend or revoke the trust and to appoint trust corpus to herself without limit, is the owner of Trust B under § 676(a). Accordingly, the transfer of assets from N's IRAs to those of M is not a transfer for purposes of § 691(a)(2) and will not result in the recognition of income under that provision. In addition, because M is rolling over the distribution into one or more IRAs in her name, she will not realize income under § 691(a)(1) for the tax year in which the distribution is made.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SHANNON COHEN
Acting Assistant to the Chief, Branch 3
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

enclosure: copy for § 6110 purposes