



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200526023

APR 7 2005

Uniform Issue List: 408.00-00

SET:EP:RA:T2

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LEGEND:

- Taxpayer A = ***
- Taxpayer B = ***
- IRA X = ***
- IRA Y = ***
- Bank C = ***
- County M = ***
- State N = ***

Dear ***:

This is in response to your letter dated February 2, 2005, in which you request rulings under section 401(a)(9) and section 408(d)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury in support of your request:

Taxpayer A died on April 7, 2000 at ** years of age. Taxpayer A was survived by her spouse, Taxpayer B, and their three children.

At the time of her death, Taxpayer A maintained IRA X and IRA Y, individual retirement arrangements, with Bank C. Taxpayer B represents that Taxpayer A prepared a beneficiary designation form naming him as the primary beneficiary of IRA X and IRA Y. However, Bank C cannot locate any beneficiary designation on file for Taxpayer A. As a result, Bank C's position regarding beneficiaries is that if no beneficiary is in effect on the IRA owner's death, the beneficiary shall be the IRA owner's estate.

On June 10, 1980, Taxpayer A executed a Last Will and Testament stating in Article Second that "...all articles of real and personal property, of every name, nature and kind whatsoever and wheresoever the same be situated...." should be given to Taxpayer B. Taxpayer B was also named Executor and Trustee of Taxpayer A's Last Will and Testament.

It is represented that at the time of her death, Taxpayer A was a resident of County M and that Taxpayer A's will has been probated before the County M Surrogate's Court in accordance with State N law.

Taxpayer B, as executor of the estate of Taxpayer A, will cause the IRA X and IRA Y proceeds to be distributed to Taxpayer A's estate. In accordance with his right as sole beneficiary under the will, Taxpayer B will request distribution of the IRA X and IRA Y proceeds. Pursuant to said request, Taxpayer B will, in his capacity as sole beneficiary, roll over the IRA proceeds to an IRA in his own name.

Based on the foregoing facts and representations, the following rulings have been requested:

1. Taxpayer B, as surviving spouse of Taxpayer A, will be treated, for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA X and IRA Y.
2. That the proceeds of IRA X and IRA Y which will be distributed to Taxpayer A's estate and subsequently paid to Taxpayer B as sole beneficiary of said estate, shall not constitute an inherited IRA within the meaning of Code section 408(d)(3)(C) with respect to Taxpayer B.
3. That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA X and IRA Y distributions which he will receive into an IRA set up and maintained in his name. Furthermore, Taxpayer B is not required to include the IRA X and IRA Y proceeds in income for Federal Income Tax purposes for the year in which said IRA X and IRA Y proceeds are distributed and rolled over into Taxpayer B's IRA to the extent that the IRA X and IRA Y proceeds are timely rolled over into an IRA set up and maintained in the name of Taxpayer B.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in section 408(d), 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 of the Code.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) 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 receives the payment or distribution.

Code section 408(d)(3)(C)(i) 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.

Code section 408(d)(3)(C)(ii) 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. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of his wife, may elect to treat those IRA proceeds as his own and roll them over into his own IRA.

Code section 408(a)(6) provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

On April 17, 2002, Final Income Tax Regulations were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the Final Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. If such an election is made, the spouse's interest in the account is subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

Although not specifically stated in the Final Regulations, a surviving spouse may not elect to treat the IRA of a decedent as his/her own if an estate is the beneficiary of the IRA even if the spouse is both the sole executor(trix) of the estate and also the sole beneficiary of the estate.

The Preamble to the Final Regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of

the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate. If the surviving spouse rolls over the distribution to an IRA in his/her name, the IRA is subject to the distribution requirements of section 401(a)(9)(A) of the Code, rather than section 401(a)(9)(B).

Section 408(d)(3)(E) of the Code provides that rollover treatment does not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

In this case, the account balances of IRA X and IRA Y at Taxpayer A's death are payable to the Taxpayer A's estate. Taxpayer B, Taxpayer A's surviving spouse, is the sole executor of Taxpayer A's estate and the sole beneficiary of such estate under Taxpayer A's will. As executor, Taxpayer A will cause the IRA X and IRA Y proceeds to be paid to Taxpayer A's estate after which the IRA X and IRA Y amounts will be paid to Taxpayer B as the estate's sole beneficiary under the will. Upon receipt, Taxpayer B intends to roll over the IRA X and IRA Y distributions into one or more IRAs set up and maintained in his own name. Said rollover will occur within 60 days of the date of the IRA amounts are distributed from IRA X and IRA Y.

Under the facts stated above, Taxpayer B is to be treated as the payee and beneficiary of IRA X and IRA Y for purposes of Code sections 408(d)(1) and 408(d)(3) and as the IRA owner of his new IRA for purposes of section 401(a)(9).

Thus with respect to your ruling requests, we conclude as follows:

1. Taxpayer B will be treated, for purposes of section 408(d)(3) of the Code, as the payee distributee of the proceeds from IRA X and IRA Y.
2. That the proceeds of IRA X and IRA Y which will be distributed to Taxpayer A's estate and subsequently paid to Taxpayer B as sole beneficiary of said estate, shall not constitute inherited IRAs within the meaning of Code section 408(d)(3)(C) with respect to Taxpayer B.
3. That Taxpayer B, the surviving spouse of Taxpayer A, may roll over the IRA X and IRA Y distributions which he will receive into an IRA set up and maintained his name. Furthermore, Taxpayer B is not required to include the IRA X and IRA Y proceeds in income for Federal Income Tax purposes for the year in which said IRA X and IRA Y proceeds are distributed and rolled over into Taxpayer B's IRA to the extent that the IRA X and IRA Y proceeds are timely rolled over into an IRA set up and maintained in the name of Taxpayer B.

This ruling letter assumes that IRA X and IRA Y are qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by Taxpayer B will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Taxpayer B's rollover of the IRA X and IRA Y

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distributions will be made within the timeframe referenced in Code section 408(d)(3)(A)(i).

Pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of any distribution from either IRA X or IRA Y required under Code section 401(a)(9).

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

If you have any questions regarding this ruling, please contact ***, SE:T:EP:RA:T2 at ***.

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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Notice of Intention to Disclose Form 437