200032044

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos: 408.00-00
408.03-00
403.05-00

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T3 ID:50-03192

Date:
MAY 15 2000

LEGEND:

Taxpayer A:

Taxpayer B:

IRA 1:

Annuity 2:

School 3:

Date 1:

Date 2:

Date 3:

Date 4:

Court C:

County D:

State E:

Sum 1:

Sum 2:

Sum 3:

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Dear .

This is in response to the , letter written on your behalf by your authorized representative, in which you, through your authorized representative, request several letter rulings under sections 408(d) and 403(b)(10) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, died on Date 2 prior to attaining age 70 ½. Taxpayer A was survived by his wife, Taxpayer B.

At his death, Taxpayer A owned an individual retirement arrangement (IRA), IRA 1, and held an annuity described in Code section 403(b) Annuity 2, because of his employment with School 3. Taxpayer A's estate is the beneficiary of IRA 1 and Annuity 2.

Taxpayer A's Last Will and Testament, dated Date 3, was properly admitted to probate in Court C, County D, State E, a court of competent jurisdiction. By Letters Testamentary dated Date 4, Taxpayer B was named the sole executrix of the estate of Taxpayer A.

Taxpayer A's Last Will and Testament, at Article Second, provides for a bequest to Taxpayer B of one-third of the residuary estate of Taxpayer A.

Taxpayer A's will, at Article Fifth, names Taxpayer B the sole executrix of Taxpayer A's estate.

Taxpayer A's will, at Article Third, gives the executrix of his estate complete discretion over its administration.

The value of Taxpayer A's IRA 1 at his date of death was Sum 1. The value of his Code section 403(b) Annuity 2 at his date of death was Sum 2. Their total value was Sum 3.

Taxpayer B, as executrix of Taxpayer A's estate, intends to allocate the total amounts remaining in IRA 1 and Code section 403(b) Annuity 2 at Taxpayer A's death to Taxpayer B's residuary interest in the estate of Taxpayer A. Taxpayer B, as executrix of Taxpayer A's estate, acting pursuant to the instructions of Taxpayer A's residuary beneficiary, will then cause the total amounts standing in IRA 1 and Annuity 2 to be directly transferred to an IRA set up and maintained in the name of Taxpayer B.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That IRA 1, which will be directly transferred to an IRA set up and maintained in the name of Taxpayer B, does not represent an inherited IRA within the meaning of Code section 408(d)(3)(C)

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with respect to Taxpayer B;

2. that, pursuant to Code section 408(d)(3), Taxpayer B is not required to include in income for federal income tax purposes for the year in which transferred any amounts transferred from IRA 1 into an IRA set up and maintained in her name; and

3. that pursuant to Code section 403(b)(10), the transfer of Taxpayer A's Annuity 2 into an IRA set up and maintained in the name of Taxpayer B will qualify as a tax-deferred rollover transaction.

With respect to your first and second ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

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 her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Section 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If a 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). Q&A A-4 further provides, in pertinent part, that an election

will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Q&A A-4 of section 1.408-8 of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse so elects.

Generally, if the proceeds of a decedent's IRA are payable to an estate, and are paid to the executrix of the estate who then pays them to the decedent's surviving spouse, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse, generally, shall not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole executrix of the decedent's estate with the sole authority to allocate assets among beneficiaries and the surviving spouse is also a residuary beneficiary of the decedent's estate.

In this case, Taxpayer B is the sole executrix of Taxpayer A's estate with the authority to allocate estate assets among estate beneficiaries. Taxpayer B is also a residuary beneficiary of Taxpayer A's estate. Taxpayer B is entitled, as a residuary beneficiary of Taxpayer A's estate, to estate assets in an amount that will equal or exceed Sum 3. As executrix of Taxpayer A's estate, Taxpayer B will allocate assets remaining in IRA 1 to Taxpayer B, as a residuary beneficiary of Taxpayer A's estate. Said IRA 1 assets will then be paid directly to an IRA set up and maintained in Taxpayer B's name.

Based on the above facts and representations, the Service will not apply the general rule, above, in this case. As a result, Taxpayer B will be treated as receiving the balance remaining in IRA 1 directly from Taxpayer A and not from the estate of Taxpayer A.

Thus, with respect to your first and second ruling requests, the Service concludes as follows:

1. That IRA 1, which will be directly transferred to an IRA set up and maintained in the name of Taxpayer B, does not represent an inherited IRA within the meaning of Code section 408(d)(3)(C) with respect to Taxpayer B; and

2. that, pursuant to Code section 408(d)(3), Taxpayer B is not required to include in income for federal income tax purposes for the year in which transferred any amounts transferred from IRA 1 into an IRA set up and maintained in her name.

With respect to your third ruling request, Code section 402 (c) sets down the rules applicable to rolling over distributions from plans qualified within the meaning of Code section 401(a).

Code section 402(c)(9), in summary, provides that a surviving spouse who receives a eligible rollover distribution attributable to a deceased plan participant may roll over such distribution into an IRA described in Code section 408. In general, pursuant to Code section 402(C)(4), a single sum distribution of the full amount standing to the benefit of a plan participant at his death will constitute an eligible rollover distribution if the plan participant dies prior to his attaining age 70 ½.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-12, provides, in pertinent part, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) shall apply to the surviving spouse in the same manner as if the surviving spouse were the employee. Q&A-12 further provides that a surviving spouse may only roll over an eligible rollover distribution into an IRA.

Section 1.402(c)-2 of the regulations, Q&A-7(b), provides that any distribution paid prior to January 1 of the calendar year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under Code section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

Code section 401(a)(31) provides that a plan qualified within the meaning of Code section 401(a) must provide that a plan participant who is entitled to receive an eligible rollover distribution must be permitted to elect to have such eligible rollover distribution be paid directly to an eligible retirement plan including an IRA.

In short, a direct transfer as that term is used in Code section 401(a)(31) is treated as a distribution followed by a rollover.

Code section 403(b)(8)(A) sets down the general rule applicable to rollovers of amounts received from Code section 403(b) annuities.

Code section 403(b)(8)(B) provides, in summary, that rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).

Code section 403(b)(10) provides, in relevant part, that requirements similar to the requirements of Code section 401(a) apply to annuities described in Code section 403(b).

Section 1.403(b)-2 of the regulations, Q&A-1, provides, in summary, that an eligible rollover distribution received from a Code section 403(b) annuity may be rolled over into an IRA.

Section 1.403(b)-2 of the regulations, Q&A-2, provides, in summary, that a Code section 403(b) annuity must provide the direct rollover option described in Code section 401(A)(31).

With respect to your third ruling request, as noted above, Taxpayer B will be treated as receiving the full amount standing to Taxpayer A's credit in IRA 1 at his death directly from Taxpayer A. Based on the facts and representations made with respect to this ruling request, the Service will also treat the full amount remaining in Taxpayer A's Code Section 403(b) Annuity 2 as paid directly from Taxpayer A to Taxpayer B. Furthermore, since Taxpayer B will receive the total value of Taxpayer A's annuity, she will receive an eligible rollover distribution as that term is used in Code section 402(c)(4) applicable to Code section 403(b) annuities pursuant to Code section 403(b)(8)(B).

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

3. that pursuant to Code section 403(b)(10), the transfer of Taxpayer A's Annuity 2 into an IRA set up and maintained in the name of Taxpayer B will qualify as a tax-deferred rollover transaction.

This ruling letter is based on the assumption that IRA 1, referenced herein, either has complied or will comply with the requirements of Code section 408(a) at all times relevant thereto. It also assumes that Taxpayer B's rollover IRA will comply with the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that Annuity 2 either met or will meet the requirements of Code section 403(b) at all times relevant thereto.

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

Pursuant to a power of attorney on file in this office, the original of this letter ruling is being sent to your authorized representative.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of letter ruling
Form 437