Uniform Issue List: 408.03-00

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Person To Contact

Telephone Number:

Refer Reply To:
T:EP:RA:T4

Date:
APR 23 2001

Legend:

Individual A =

Individual B =

Trustee C =

IRA X =

State S =

Dear

This is in response to a request for letter rulings submitted on July 11, 2000, as supplemented by a letter dated February 8, 2001, 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 ("Code").

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

Individual A was born on September 26, 1938, and died on December 11, 1999. At his death, Individual A had not attained age 70 ½. Individual B, who was born on December 13, 1938, is his surviving spouse. At his death, Individual A maintained IRA

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X with Trustee C. Individual A did not designate a beneficiary of his IRA X, but Article IX of the IRA provides, in part, that if an individual does not designate a beneficiary, his estate will be the beneficiary. No distributions have been made from IRA X after the date of Individual A's death. It is represented that IRA X meets the requirements of section 408(a) of the Code.

Individual A died intestate, and, under State S law, Individual B has priority to serve as the sole personal representative of her husband's estate. She has filed a petition for the probate of Individual A's estate, and has been appointed the sole personal representative of Individual A's estate.

Pursuant to State S laws of intestate succession, the intestate share of a decedent's surviving spouse is: the entire intestate estate if: (i) no descendant of the decedent survives the decedent; or (ii) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

Your authorized representative asserts on your behalf that neither Individual A nor Individual B had children outside of their marriage, all of the decedent's surviving descendants are also descendants of the surviving spouse, and there are no other descendant of the surviving spouse who survives the decedent. Therefore, pursuant to the laws of State S, Individual B's share of Individual A's estate is the entire intestate estate.

Individual B, acting as sole personal representative, will cause Individual A's IRA X account balance to be distributed to his estate. Then, in satisfaction of her intestate share of the estate, she will then pay the account balance to herself as sole intestate beneficiary of Individual A's estate. Finally, she will roll over the proceeds of IRA X into an IRA set up and maintained in her name. The rollover will be accomplished not later than the 60th day following the date on which IRA X 's distribution is distributed to Individual A's estate. All expenses and charges against the estate are to be paid from assets other than from IRA X.

Based on the facts and representations, the following rulings are requested:

1. That the proceeds of Individual A's IRA that will be received by Individual B pursuant to intestate succession will be treated as being paid directly from IRA X to Individual B. As a result, Individual B will be treated and the payee or distributee of said IRA proceeds for purposes of section 408(d)(1) of the Code.

2. That Individual A's IRA does not represent an inherited IRA within the meaning of section 408(d)(3) of the Code.

3. That Individual B is eligible to roll over the distribution of Individual A's IRA proceeds into an IRA set up and maintained in her own name pursuant to Code section 408(d)(3) of the Code with respect to Individual B; and

4. That if Individual B accomplishes said rollover, she will not be required to include the distribution from IRA X in gross income for federal income tax purposes for the year in which said distribution will be 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.

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 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).

Section 1.408-8, Q&A-6, of the proposed regulations provides, in pertinent part, that if the surviving spouse of an employee rolls over a distribution from either a qualified plan or an IRA into an IRA, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-4.

Generally, if a decedent's IRA proceeds pass through a third party, e.g., an estate, 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 administratrix of the estate with sole discretion to allocate and pay estate assets, the surviving spouse as sole administratrix allocates IRA assets to herself as the sole beneficiary of the entire estate, 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.

Here, Individual B is the surviving spouse of Individual A and the sole personal representative of Individual A's estate. Individual A's estate is the beneficiary of IRA X which will be distributed to his estate. Individual B is the sole intestate beneficiary of Individual A's estate. All of the assets in IRA X will be distributed to Individual A's estate, and those same assets will be distributed by Individual B as sole administratix of Individual A's estate to Individual B, the sole beneficiary of said estate. Individual B will then take said IRA X proceeds and contribute them to an IRA, described in Code section 408(a), to be 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 Individual A's IRA that will be received by Individual B pursuant to intestate succession will be treated as being paid directly from IRA X to Individual B. As a result, Individual B will be treated and the payee or distributee of said IRA proceeds for purposes of section 408(d)(1) of the Code.

2. That Individual A's IRA does not represent an inherited IRA within the meaning of section 408(d)(3) of the code.

3. That Individual B is eligible to roll over the distribution of Individual A's IRA proceeds into an IRA set up and maintained in her own name pursuant to Code section 408(d)(3) of the Code with respect to Individual B; and

4. That if Individual B accomplishes said rollover, she will not be required to include the distribution from IRA X in gross income for federal income tax purposes for the year in which said distribution will be made.

This ruling is based on the assumption that IRA X established by Individual A, and the IRA to be established by Individual B, either meet or will meet the requirements of section 408 of the Code at all times relevant to the transaction described herein. Additionally, it is based upon the assumption that the proposed rollover will meet all the applicable requirements of section 408(d)(3) of the Code.

This ruling does not address any issues that may arise under the proposed regulations published at 2001-11 I.R.B. 865 (March 12, 2001), concerning required distributions from retirement plans.

This ruling is directed only to the taxpayer who requested it. Section 6110(k) of the Code 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 a power of attorney on file in this office.

Sincerely yours,

/s/ Alan Pipkin

Alan Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

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