Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index No.: 408.03-00

Person to Contact:

199908063

Telephone Number:

Refer Reply to:
OP:E:EP:T:1

Date:
DEC 3 1998

Legend:

Individual A =
Individual B =
State Y =
County C =
Custodian M =

Dear :

This is in response to a ruling request submitted on your behalf by your authorized representative in a letter dated March 26, 1998, regarding the federal income tax consequences of a proposed rollover of a distribution from a decedent's individual retirement account ("IRA") through the decedent's estate to an IRA established by the spouse of the decedent.

The following facts and representations have been submitted on your behalf:

Individual A's spouse, Individual B, whose date of birth was June 1, 1929, died on November 12, 1997, survived by Individual A. Individual A's date of birth is January 8, 1933. At the time of his death, Individual B was a resident of State Y. Individual B's Last Will and Testament was admitted to probate on December 8, 1997 with the Clerk of Courts for County C in State Y. Letters Testamentary were issued to Individual A as executrix of his estate.

At the time of his death, Individual B owned an individual retirement arrangement (IRA) which consisted of cash and marketable securities with a fair market value of approximately $55,000. Custodian M is the custodian of the IRA.

On October 30, 1997, Individual B executed a new Designation of Beneficiary form with respect to the IRA. Individual B named his estate as the primary beneficiary of the IRA. Individual A was designated as the sole beneficiary of his estate and was given the right to disclaim all or a portion of the bequest to her, which disclaimed portion would pass into a trust from which

Individual A would benefit for her life. Individual A has not and does not intend to make such a disclaimer.

Individual A, as sole trustee of Individual B's estate, intends to distribute the entire balance of Individual B's IRA through the estate to an IRA maintained on her behalf. She intends to name her four children as beneficiaries of her IRA.

Based on the foregoing facts, Individual A requests a ruling that she, as the surviving spouse and sole beneficiary of Individual B's estate, which includes his IRA, may roll over, under the spousal rollover rules of section 408 of the Internal Revenue Code, her late spouse's IRA maintained at Custodian M, so that the distribution of the entire proceeds from the IRA does not result under section 408(d)(1) in inclusion in income by either the estate or Individual A.

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

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

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 she receives the payment or distribution.

Section 408(b)(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 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. Thus, a surviving spouse for whose benefit the account is maintained and who acquired 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.

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 the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the IRA proceeds into her own IRA.

However, if a decedent's estate is the beneficiary of a decedent's IRA proceeds, and the decedent's surviving spouse is the sole trustee of the estate and the sole beneficiary of the IRA proceeds that pass through the 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.

Thus, with respect to your ruling request, we conclude that Individual A, as the surviving spouse and sole trustee of her spouse's estate, which includes his IRA, may roll over, under the spousal rollover rules of section 408 of the Code, Individual B's IRA to an IRA established by Individual A, so that the distribution of the entire proceeds from the IRA does not result in inclusion in income by either the estate or Individual A under section 408(d)(1).

This ruling letter is based on the assumption that both Individual A's IRA and Individual B's IRA satisfy the requirements of section 408(a) of the Code at all relevant times, and that the rollover contribution to Individual A's IRA will occur within 60 days of the date of distribution of assets from Individual B's IRA.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

John Swieca

John Swieca
Chief, Employee Plans
Technical Branch 1

Enclosures:
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