199934025

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant Index Nos.: 408.00-00; 408.03-00

Contact Person:

Telephone Number:

In reference to:
OP:E:EP:T:2

Date: JUN 4 1999

LEGEND:

Taxpayer A =

Taxpayer B =

Trust E =

Trust F =

IRA M =

IRA N =

IRA O =

IRA P =

IRA Q =

Dear :

This is in response to your request for a private letter ruling dated , as revised by a letter dated , submitted on your behalf by your authorized representative. In support of your request, you have submitted the following facts and representations.

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Taxpayer A and Taxpayer B were husband and wife. On , Taxpayer A and Taxpayer B each created a revocable living trust — Trust E and Trust F, respectively. The settlor of Trust F is Taxpayer B. Taxpayer A and Taxpayer B both executed first amendments to their revocable living trusts on . Taxpayer A died on , at the age of sixty-six. Taxpayer B is presently age sixty-four.

At his death, Taxpayer A was the participant of numerous individual retirement accounts ("IRAs") and named Taxpayer B individually as beneficiary of some of the IRAs, and named Trust F as the beneficiary of other IRAs. The beneficiary designations for the IRAs were executed by Taxpayer A at various times prior to his death. Taxpayer B serves as trustee of Trust F. Taxpayer B is also the settlor and the sole current beneficiary of Trust F, and retains the right to amend or revoke Trust F in whole or in part.

Section 3.2 of Trust F provides as follows:

> The Settlor expressly reserves the right, at any time and from time to time, during Settlor's lifetime, by instrument in writing delivered to the Trustee, to alter, amend, or revoke this agreement, either in whole or in part ... In case of revocation, the insurance policies, securities, and property held in trust hereunder, or that part thereof as to which the Agreement may be revoked, shall be delivered by the Trustee to the Settlor or in accordance with the Settlor's written instructions.

During Taxpayer B's lifetime, paragraph 3.3(a) of Trust F provides that the Trustee will pay to Taxpayer B (or apply for her benefit) all of the net income from Trust F in convenient installments, but at least monthly. Paragraph 3.3(b) of Trust F provides that during Taxpayer B's lifetime, the Trustee will make discretionary principal payments to Taxpayer B for her health, support, and maintenance. Paragraph 3.3(b) also requires the Trustee to pay Taxpayer B "the amount of any and all taxes, state, county or federal or otherwise" arising from Trust F. Finally, paragraph 3.3(b) authorizes the Trustee to make discretionary principal payments "to or for the support, maintenance, health and education of Settlor's spouse, Taxpayer A, and other dependents..." Since Taxpayer A is deceased and Taxpayer B has no other dependents, Taxpayer B is the sole current beneficiary of Trust F and holds the unfettered right to revoke Trust F either in whole or in part.

The custodians of Taxpayer A's IRAs (i.e., IRAs M, N, O, P, and Q) have not distributed any IRA proceeds to Trust F. It is proposed that the custodians will distribute the IRA proceeds in lump sums to Trust F. In order to achieve a spousal rollover, Taxpayer B will immediately revoke Trust F with respect to IRAs M, N, O, P, and Q and will direct the custodians of IRAs M, N, O, P, and Q to transfer the balances to an IRA which will be established in Taxpayer B's name in a direct trustee-to-trustee transfer (as the term is used in section 401(a)(31) of the Code).

If Taxpayer B does not "alter, amend, or revoke" Trust F with respect to the IRA

proceeds, Taxpayer A's IRA proceeds must be distributed to Trust F and will be added to the Trust F estate to be administered under the terms of Trust F.

It is represented that IRAs M, N, O, P, and Q met the requirements of section 408 of the Code at all times and that the IRA set up and maintained by Taxpayer B to hold the assets transferred from IRAs M, N, O, P, and Q will also meet the requirements of section 408 of the Code.

Based on the above, you request the following letter rulings:

1. IRAs M, N, O, P, and Q do not represent inherited IRAs within the meaning of Code section 408(d)(3)(C) with respect to Taxpayer B.

2. Taxpayer B is eligible to roll over the lump sum distributions from IRAs M, N, O, P, and Q into an IRA established and maintained in her own name pursuant to section 408(d)(3) of the Code if, as part of partially revoking Trust F, she directs the custodians of IRAs M, N, O, P, and Q to transfer the IRA balances to an IRA established and maintained in her own name in a direct trustee-to-trustee transfer (as the term is used in section 401(a)(31) of the Code).

3. Taxpayer B will not be required to include in gross income for federal income tax purposes for the year in which the spousal rollover is timely made any portion of the amounts transferred from IRAs M, N, O, P, and Q to an IRA established and maintained in her own name.

Section 408(d)(1) of the Code states, except as otherwise provided, that 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.

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

Section 408(d)(3)(E) of the Code provides, generally, that section 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under either subsection (a)(6) or (b)(3).

Section 1.408-8 A-4(b) of the proposed 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 distributions 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) of the Code, rather than those of section 401(a)(9)(B) of the Code.

Generally, if a decedent's IRA passes through a third party, e.g., a trust, and then is distributed to the decedent's surviving spouse, said spouse will be treated as acquiring it from the trust, a third party, and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll it over into his or her IRA.

However, in a situation where the surviving spouse is the sole trustee of a trust which trust is the beneficiary of an IRA, the surviving spouse has the power to revoke the trust and does revoke it, and, as a result of the revocation, the IRA proceeds are paid directly to the surviving spouse, the Internal Revenue Service ("Service") will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the trust.

In the present case, (1) Trust F is the named beneficiary of the proceeds of Taxpayer A's IRAs, (2) Taxpayer B is the surviving spouse of Taxpayer A, the settlor of Trust F, and the sole current beneficiary of Trust F, (3) Taxpayer B is the sole trustee of Trust F, and (4) Taxpayer B has the power to revoke Trust F and receive all of the Trust F assets. Taxpayer B intends to cause the proceeds of Taxpayer A's IRAs to be paid to Trust F, the beneficiary thereof. Subsequent to payment, Taxpayer B will revoke Trust F pursuant to trust terms. As a result of said revocation, the proceeds of Taxpayer A's IRAs will be payable to Taxpayer B. Taxpayer B, as trustee of Trust F, will then pay herself, as the settlor of Trust F, the proceeds of Taxpayer A's IRAs. Under the circumstances, the Service will not apply the general rule, but, for purposes of Code section 408(d), will treat Taxpayer B as having acquired IRAs M, N, O, P, and Q directly from Taxpayer A and not from Trust F. Furthermore, as noted above, Taxpayer B is the surviving spouse of Taxpayer A.

Therefore, with respect to your first ruling request, we conclude that IRAs M, N, O, P, and Q do not represent inherited IRAs within the meaning of Code section 408(d)(3)(C) with respect to Taxpayer B.

With respect to ruling requests two and three, we conclude that Taxpayer B is eligible to roll over the lump sum distributions from IRAs M, N, O, P, and Q into an IRA established and maintained in her own name in a direct trustee-to-trustee transfer (as the term is used in section 401(a)(31) of the Code). We also conclude that Taxpayer B will not be required to include in gross income for federal income tax purposes for the year in which the spousal rollover is timely made any portion of the amounts transferred from IRAs M, N, O, P, and Q to an IRA established and maintained in Taxpayer B's own name.

The above ruling is based upon the assumption that IRAs M, N, O, P, and Q established by Taxpayer A and the IRA to be established by Taxpayer B, met the requirements of section 408 of the Code at all times during the transaction, and that the transfers from IRAs M, N, O, P, and Q to the IRA established by Taxpayer B will meet all the applicable requirements of section 408(d)(3) of the Code.

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

Sincerely yours,

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

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

cc: