



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200618030

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Uniform Issue List 408.00.00

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Individual C:

State C:

IRA 1:

Trust E:

Date F

Company G:

Amount H:

Dear :

This is in response to the _____, letter, as supplemented by _____, correspondence dated _____, submitted by your authorized representative on your behalf, in which you request a private letter ruling under sections 401(a)(9) and 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A died on February 28, 2003, a resident of State C. Taxpayer A had reached his required beginning date on Date F. Taxpayer A was survived by his wife, Taxpayer B.

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At the time of his death, Taxpayer A was the owner of IRA 1 which he maintained with Company G. IRA 1 met the requirements of Internal Revenue Code section 408. Trust E was the beneficiary of Taxpayer A's IRA 1. Upon the death of Taxpayer A, Taxpayer B and Individual C became the Co-trustees of Trust E. Individual C is the son of Taxpayer A and Taxpayer B.

Trust E provides that Taxpayer B should receive during her lifetime amounts of net income necessary for her health, support, welfare and necessary maintenance. Upon Taxpayer B's death the remaining principal and any accumulated income of the Trust E is to be distributed to Taxpayer A's children and grandchildren free of trust.

After Taxpayer A's death, Taxpayer B and Individual C employed an attorney to close out the estate, prepare the necessary filings and provide professional advice on the administration of the estate. The Co-trustees were advised the total balance in IRA 1 had to be withdrawn and placed in a non-IRA account under Trust E's name and identification number. Individual C, relying on the attorney's advice, filled out the paperwork in his capacity of Co-Trustee of Trust E. The amount in the IRA account on July 10, 2003, the date of distribution was, Amount H. Trust E received a 1099-R for the year indicating Amount H as a taxable amount. Taxpayer B died on January 13,

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

1. Individual C, as executor of the estate of Taxpayer B, requests the waiver of the 60 day rollover requirement and asks the Service to permit a period of time, not to exceed 60 days as measured from the date of this letter ruling, to contribute the amounts distributed from IRA 1 on or about July 10, 2003, into another individual retirement arrangement (IRA) described in section 408(a) of the Internal Revenue Code.

With respect to your 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 Code 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

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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. A surviving spouse may also elect to roll over IRA proceeds into another IRA set up and maintained in the name of the deceased for the benefit of the surviving spouse.

Pursuant to Code section 408(d)(3), a surviving spouse may roll over a distribution from an IRA into another IRA, either set up and maintained in the name of the surviving spouse or set up and maintained in the name of the deceased for the benefit of the surviving spouse, as long as the surviving spouse is the sole payee or distributee of the distributing IRA (or a defined portion thereof). In this case, IRA 1 was allocated to Trust E, Taxpayer B was the decedent's widow. Trust E provided said widow Taxpayer B was only entitled to receive the portion of net income deemed necessary for her health, support, welfare and necessary maintenance. As a result, Taxpayer B cannot be treated as the sole "payee" or "distributee" of said IRA 1.

Thus, with respect to your ruling requests, based on the specific set of facts presented in this case, since Taxpayer B was not the sole individual entitled to receive amounts from IRA 1 at the death of Taxpayer A, she was not eligible to roll over the IRA 1 distribution she received on or about July 10, 2003 into another IRA. Thus, the 60-day rollover period found in Code section 408(d)(3)(A) did not apply to said distribution. As a result, the Service cannot grant an extension thereto.

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

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Sincerely yours,

Manager Employee Plans Technical Group

Enclosures:

Deleted copy of letter ruling
Form 437