



Tax Reduction Letter

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Private Letter Ruling 9344027

August 9, 1993

This is in response to the *****, letter submitted by your authorized representative on your behalf, in which you request a letter ruling under section 408(d)(6) of the Internal Revenue Code. The following facts have been submitted in support of your ruling request.

Taxpayers A and B have been married since *****. From *****, until *****, Taxpayers A and B resided together in City D in State E, a community property state. They separated in ***** and have been living apart since the date of separation. Taxpayer A continues to reside in State E. You represent that Taxpayer B maintains State E as her domicile, although she resides outside the continental United States.

Taxpayer A retired from Company C in *****. While employed by Company C, Taxpayer A was a participant in Plan X which, on *****, received a determination letter from the Internal Revenue Service that it was qualified within the meaning of section 401(a) of the Code. On *****, Taxpayer A received a single sum distribution of his [*2] Plan X account balance which, except for amounts retained to pay personal expenses, he rolled over into a number of individual retirement arrangements (IRAs) maintained on his behalf on a timely basis. Taxpayer A continues to maintain his IRAs. None of Taxpayer A's Plan X account balance consisted of contributions made by him to Plan X.

On *****, Taxpayers A and B entered into a written separation agreement. The *****, agreement has been modified on three occasions, of which the most recent was *****. The *****, agreement remains in effect.

Article 11 of the *****, agreement indicates that Taxpayer A's IRAs constitute community property under the laws of State E. Article 11 also provides for a division of Taxpayer A's IRAs. Furthermore, pursuant to this Article, in 1993, Taxpayers A and B intend to cause one-half of the balance in Taxpayer A's IRAs to be distributed to Taxpayer B as her separate property. Taxpayer B will then invest some or all of the IRA distribution into an IRA maintained on her behalf.

Taxpayers A and B are not divorced and are not ***** contemplating entering into divorce proceedings. Additionally, your authorized representative has not asserted that Taxpayers A and [*3] B are legally separated. Finally, your authorized representative has not asserted that the division of Taxpayer A's IRAs will be in the nature of a transfer under a divorce or separation instrument as defined in section 71(b)(2)(A) of the Code. The separation agreements referenced herein constitute private agreements between Taxpayer A and Taxpayer B.

Based on the above facts, you request the following ruling:

The distribution of one-half of the balances in Taxpayer A's IRAs to Taxpayer B will not be taxable to Taxpayer A under section 408(d)(1) of the Code but will be treated as the property of Taxpayer B pursuant to section 408(d)(6) of the Code.

With respect to your ruling request, section 408(d)(1) of the Code provides that, except as otherwise provided in this subsection, 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)(6) of the Code provides that the transfer of an individual's interest in an individual retirement account or individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph [*4] (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of said transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

Section 408(g) of the Code provides that section 408 of the Code shall be applied without regard to any community property laws.

Section 71(b)(2)(A) of the Code provides that the term "divorce or separation instrument" includes a decree of divorce or separate maintenance or a written instrument incident to such a decree.

Section 71(b)(2)(B) of the Code provides that "divorce or separation instrument" includes a written separation agreement.

In this case, Taxpayers A and B have entered into a private written separation agreement which, in part, provides for the division of Taxpayer A's IRAs. The separation agreement is not incident to either a divorce or a legal separation, and your authorized representative has not asserted that Taxpayers A and B intend to present their agreement [*5] to a court which has jurisdiction over their marital affairs in order for the court to enter a decree with respect to the separation agreement.

Thus, based on the above, we conclude that the separation agreement entered into between Taxpayers A and B does not constitute either a decree or written instrument within the meaning of section 71(b)(2)(A) of the Code.

Therefore, with respect to your ruling request, we conclude that

The distribution of one-half of the balances in Taxpayer A's IRAs to Taxpayer B will be taxable to Taxpayer A under section 408(d)(1) of the Code and will not be treated as the property of Taxpayer B pursuant to section 408(d)(6) of the Code.

This ruling assumes that Taxpayer A's IRAs are qualified within the meaning of section 408(a) of the Code at all times relevant thereto. This ruling also assumes that Plan X was qualified within the meaning of section 401(a) of the Code at the time Taxpayer A received his single sum

distribution therefrom, and that Taxpayer A's contributions to his IRAs were eligible for tax-deferred rollover treatment under section 402(a) of the Code which governed the eligibility of qualified plan distributions for rollover treatment during [*6] 1992.

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

Sincerely yours, John G. Riddle, Jr., Acting Chief, Employee Plans, Rulings Branch