



Tax Reduction Letter

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PLR 9416039

January 26, 1994

This is in response to a ruling request dated *****, *****, as amended by a letter dated *****, submitted by your authorized representative on your behalf, in which you request several letter rulings under section 408(d) of the Internal Revenue Code.

The facts on which the ruling request is based are as follows.

Taxpayer A died on *****. At the time of his ***** death, Taxpayer A owned IRA F which had a value of approximately *****. Taxpayer A had designated Trust C as the beneficiary of IRA F. Taxpayer A's date of birth was *****.

Under the terms of Taxpayer A's last will and testament, IRA F was transferred to Trustee E to be held by Trustee E (a bank), as trustee, under the terms of Trust C.

Taxpayer B is Taxpayer A's surviving spouse. Taxpayer B has not attained age 70 1/2.

Article I, Item A of Trust C provides for the ***** establishment and funding of Subtrust D in the largest amount of Trust C assets that will qualify for the marital deduction in Taxpayer A's estate, reduced by an amount, if any, needed to increase his taxable estate so that the federal estate tax as finally determined [*2] will equal the unified credit and state tax credit.

Your authorized representative asserts, and the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, indicates that after taking into consideration bequests to Taxpayer B, estate expenses, debts of Taxpayers A and B, and the unified credit, in order to comply with the above language of Trust C, Subtrust D must be funded in the amount of *****. Presently, Trust C holds assets valued approximately at *****. Of this amount, funds from IRA F are valued at approximately *****, and life insurance proceeds are valued at approximately *****. Accordingly, Subtrust D will be funded with assets in the amount of ***** from Trust C consisting of all of the life insurance proceeds with the remainder being funds from IRA F. Taxpayer B is the sole beneficiary of Subtrust D and is not a trustee of Subtrust D. Trustee E is the trustee of Subtrust D.

Article I, Item A(1) of Trust C provides, in pertinent part, that "the trustee shall pay the net income from Subtrust D to or for the benefit of Taxpayer B in quarter-annual installments during her life, together with so much principal as she may request in writing." Taxpayer B proposes [*3] to request in writing a distribution of ***** in Subtrust D assets. At such time, the portion of the ***** which consists of IRA F proceeds will be distributed from IRA F to Trust C and then transferred immediately to Subtrust D pursuant to the terms of Trust C for the purpose of immediate distribution to Taxpayer B. Upon receipt of these funds, Taxpayer B intends to roll over all of the amounts received from IRA F into an individual retirement arrangement (IRA) maintained on her behalf within 60 days of distribution from IRA F. Taxpayer B will not roll over any funds included in the ***** distribution which consists of life insurance proceeds.

Your authorized representative has asserted that Taxpayer B has not rolled over into an IRA maintained on her behalf any amounts distributed previously from IRA F.

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

1. That Taxpayer B's IRA account does not represent an inherited IRA within the meaning of section 408(d)(3)(C) of the Code; and

2. That, pursuant to section 408(d)(3) of the Code, Taxpayer B is not required to include in income for federal tax purposes proceeds of IRA F which were distributed to Trust C, then transferred [*4] to Subtrust D, and subsequently transferred to Taxpayer B, for the year such amount was distributed to her from subtrust D, to the extent the IRA F proceeds will be contributed by Taxpayer B to her rollover IRA within 60 days of the date of distribution from Taxpayer A's IRA F and to the extent the value of the assets transferred from Subtrust D to Taxpayer B exceeds the amount of life insurance proceeds ***** which may be used to fund Subtrust D.

With respect to your ruling request, 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 the requirements of sections 408(d)(3)(A) and (d)(3)(B).

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 [*5] 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.

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)(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 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 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 [*6] 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 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. a trust, 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 the trustee(s) of a trust which distributes IRA proceeds to a surviving spouse has no discretion with respect to either the allocation of the IRA proceeds to a trust or a subtrust within the trust or to the payment of the IRA proceeds to the surviving spouse, then for purposes of section 408(d)(3) of the Code, the Service will treat the surviving spouse [*7] as having acquired the IRA proceeds from the decedent and not from the trust.

Taxpayer B is the surviving spouse of Taxpayer A. As required by Article I, Item A of Trust C, a distribution from the IRA of Taxpayer A will be made into Trust C. A portion of the IRA distribution, representing the difference between the aforementioned life insurance proceeds and the amount required to be placed in Subtrust D by such Article, will be placed into Subtrust D. Pursuant to the provisions of Trust C, the trustees of Trust C, which are also the trustees of Subtrust D, will distribute to Taxpayer B the assets in Subtrust D of which a portion represents amounts distributed from the IRA of Taxpayer A to Trust C and subsequently transferred to Subtrust D. Taxpayer B will then roll over these IRA amounts into an IRA maintained on her behalf. The rollover will take place within 60 days of the date the distribution was made from IRA F into Trust C. Insurance proceeds in the amount of ***** are also eligible to be transferred to Subtrust D. Taxpayer B intends to roll over into her IRA only amounts distributed to her from Subtrust D valued at ***** which constitutes the difference between ***** and ***** [*8] which difference must be funded with IRA assets.

Based on the foregoing, we conclude, with respect to your ruling request, that:

1. That Taxpayer B's IRA account does not represent an inherited IRA within the meaning of section 408(d)(3)(C) of the Code; and

2. That, pursuant to section 408(d)(3) of the Code, Taxpayer B is not required to include in income for federal tax purposes proceeds of IRA F which were distributed to Trust C, then transferred to Subtrust D, and subsequently transferred to Taxpayer B, for the year such amount was distributed to her from Subtrust D, to the extent the IRA F proceeds will be contributed by Taxpayer B to her rollover IRA within 60 days of the date of distribution from Taxpayer A's IRA F and to the extent the value of the assets transferred from Subtrust D to Taxpayer B exceeds the amount of life insurance proceeds ***** which may be used to fund Subtrust D.

This ruling letter is based on the assumption that the IRA established by Taxpayer A satisfied the requirements of section 408(a) of the Code at the time of the transactions described herein. In addition, this ruling is based on the assumption that, in accordance with section 408(d)(3)(B), Taxpayer [*9] B has not received any other amount described in section 408(d)(3)(A)(i) from the distributing IRAs described herein during the one-year period described in section 408(d)(3)(B).

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