

200452041



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

SEP 30 2004

T:EP:RA:T3

Legend:

Taxpayer A = *****
IRA X = *****
Individual M = *****
Trust T = *****
Amount D = *****
Custodian B = *****
Beneficiary E = *****
Beneficiary F = *****
Beneficiary G = *****
Beneficiary H = *****
Beneficiary K = *****

Dear *****:

This is in response to your letter dated May 25, 2004, as supplemented by correspondence dated July 12, 2004, September 2, 2004 and September 8, 2004, submitted on your behalf by your authorized representative, in which you request a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Individual M established an individual retirement arrangement, IRA X, with Custodian B. On June , Individual M established Trust T and appointed Taxpayer A as a trustee of Trust T. Trust T was named the primary beneficiary of IRA X. Article III of the Trust T Agreement identifies Beneficiaries E, F, G, H, and K as equal beneficiaries of Trust T. Each beneficiary's share is to be held as a separate trust and administered according to the terms of Trust T. However, with respect to the IRA X assets, Trust T provides that none of the IRA X assets is to be deposited into Beneficiary E's, Individual M's surviving spouse, separate trust. Therefore, Taxpayer A states that, under the provisions of Trust T, the four individuals entitled receive an equal share of IRA X are Beneficiaries F, G, H, and K. Individual M died on February . Taxpayer A is also the executor of Individual M's estate.

On December Taxpayer A contacted Custodian B in order to determine if there were any matters that needed to be wound up with respect to IRA X before the end of the year, and was advised by Custodian B that the assets of IRA X would have to be distributed by the end of the day because a trust, Trust T, was the primary beneficiary of IRA X. Upon this advice, Taxpayer A signed the IRA beneficiary distribution form authorizing Custodian B to transfer Amount D from IRA X to Trust T, a non-retirement account, also maintained with Custodian B. Upon receipt of this authorization, Custodian B, on December 31, 2003, distributed the entire value of IRA X (Amount D) to Trust T.

Taxpayer A states that he subsequently learned that another distribution option of the IRA X assets might have been available to Beneficiaries F, G, H and K under section 401(a)(9) of the Code and the applicable regulations there under even though Trust T was named as the primary beneficiary of IRA X. Taxpayer A asked Custodian B to reverse the distribution, but was informed by Custodian B that it did not have the authority to do so.

Taxpayer A has requested that the Service, under it's authority to waive the 60-day rollover requirement, waive such requirement with respect to the distribution from Trust T to Taxpayer A and (1) allow Amount D to be returned to IRA X and (2) allow Beneficiaries F, G, H and K the opportunity to roll over their respective share of the IRA X assets to an IRA established in their own names so that they can then exercise distribution options under Code section 401(a)(9).

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

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the day on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C) of the Code denies rollover treatment for inherited IRAs. Section 408(d)(3)(C)(i) provides that in the case of an inherited IRA-

- (I) this paragraph shall not apply to any amount received by any individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and
- (II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code defines "Inherited IRA" and provides that an individual retirement account or annuity shall be treated as inherited if—

- (i) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and
- (ii) such individual was not the surviving spouse of such other individual.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to Code section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

With respect to whether or not Amount D can be returned to IRA X, documentation submitted in this request for a ruling indicates that Taxpayer A completed a distribution form authorizing Custodian B to distribute the IRA X assets to Trust T, the beneficiary so named by Individual M as the primary beneficiary of IRA X. Trust T was named by Individual M prior to his death as the primary beneficiary of IRA X and, upon Individual M's death, the entire value of IRA X, per that prior beneficiary designation, should have been made to Trust T. Rev. Proc. 2003-16 authorizes the Service to waive the 60-day rollover requirement where the failure to waive such a requirement would be against equity or good conscience. There is nothing in section 408(d)(3)(I) of the Code or Rev. Proc. 2003-16 that would allow the Service, under this authority, to override the payment of a distribution to the beneficiary named by the IRA owner to receive the distribution upon the IRA owner's death.

You further ask that Beneficiaries F, G, H, and K be allowed to roll over their respective portion of the IRA X assets to an IRA established in their own names.

In this case, Individual M named Trust T as the beneficiary of IRA X. Section 1.401(a)(9)-4, Q&A-3(a) of the "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) which were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002) provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person that is

not an individual, such as an employee's estate, may not be a designated beneficiary. Further, section 1.401(a)(9)-4, Q&A-5(a) of the "Final" regulations provides, in pertinent part, that a trust is not a designated beneficiary even though the trust is named as a beneficiary. Consequently, Trust T is not a designated beneficiary of IRA X even though it was named by Individual M as the beneficiary of IRA X.

However, section 1.401(a)(9)-4, Q&A-5(a) of the "Final" regulations further provides that if the requirements of Paragraph (b) of Q&A 5 are met, (and the required documentation as described in section Q&A-6(b) (required minimum distributions after death) is provided to the plan administrator by the trustee of the trust), the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of Code section 401(a)(9). If these requirements are met, the trust is a "see-through" trust and is a named beneficiary of the IRA as of the date of the IRA owner's death, and the beneficiaries of the trust, with respect to the trust's interest in the IRA, may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from the IRA under Code section 401(a)(9).

Beneficiaries, F, G, H and K are described and identified in Trust T as the surviving children of Individual M. As surviving children of Individual M, their respective share of the IRA X assets is treated as an inherited IRA under Code section 408(d)(3)(C) because they would have acquired their respective share by reason of the death of Individual M, and further because they are not the surviving spouse of Individual M.

With respect to IRAs, the 60-day rollover requirement is only applicable to distributions from IRAs that meet the requirements of Code sections 408(d)(3)(A) and 408(d)(3)(D). The 60-day rollover requirement does not apply to inherited IRAs because section 408(d)(3)(C) of the Code denies rollover treatment for such IRAs. Therefore, assuming Trust T meets the requirements of Q&A-5 and Q&A-6 of section 1.401(a)(9)-4 of the "Final" regulations, and further assuming that Beneficiaries F, G, H, and K would have been deemed the designated beneficiaries of IRA X, their respective share of IRA X is considered an inherited IRA and, consequently, is not eligible for rollover treatment under the Code. A nonspousal beneficiary can only direct a trustee-to-trustee transfer of an IRA, although the IRA meets the description of an inherited IRA, as opposed to a rollover of an IRA, from one trustee (or custodian) to another. Further, Beneficiaries F, G, H and K's respective share of the IRA X assets would be considered an inherited IRA even if they received their respective share directly from IRA X.

Therefore, with respect to your ruling request, we conclude that Amount D cannot be redeposited into IRA X and further conclude that Beneficiaries F, G, H, and K's respective share of the IRA X assets is not eligible for rollover treatment.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or the regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions concerning this ruling, please contact

*****SE:T:EP:RA:T2.

Sincerely yours,

(Signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose