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Person To Contact:
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Date:
August 04, 2009

Estate =

A =

B =

C =

D =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
IRA X =

Dear :

This letter responds to a letter dated March 4, 2009, and subsequent correspondence, submitted on behalf of Estate by its authorized representative, requesting rulings under §§ 691, 401, and 408 of the Internal Revenue Code.

The information submitted states that A maintained an individual retirement account (IRA), IRA X. A died on Date 1, at the age of 72 years. Prior to A's death, A had begun taking required distributions from IRA X.

A named his spouse, B, as the sole beneficiary of IRA X. A did not name any contingent beneficiaries for IRA X. Pursuant to A's beneficiary designation, B was the sole "designated beneficiary", as that term is defined in § 401(a)(9), with respect to A's IRA X.

B was born on Date 2. B survived A, but B died on Date 3, which was seven days after the death of A. B was 70 years and eleven months old when she died. During her life, B did not disclaim IRA X, did not take any distributions from IRA X, and did not elect to treat IRA X as her own. Furthermore, B did not name any beneficiaries of her interest in A's IRA X. As a result, the right to receive IRA X passed by B's will to C and D.

Estate's personal representatives propose to subdivide IRA X into two sub-IRAs. Each sub-IRA will be titled "A (Deceased) for the benefit of a specific beneficiary under the last will and testament of B (Deceased)". Estate represents that said subdivision of IRA X will be made by means of trustee to trustee transfers. No distributions will be made from IRA X and no rollovers of IRA X amounts will be made into the two created sub-IRAs. Said sub-division will occur no later than Date 4.

Based on the above facts and representations, Estate requests the following letter rulings:

1. That the division of IRA X and the establishment of the two sub-IRAs will not constitute a transfer within the meaning of § 691(a)(2), distributions within the meaning of § 408(d)(1), or rollovers within the meaning of § 408(d)(3);

2. That after the division of IRA X and the establishment of the sub-IRAs, Estate will not include in its gross income, and the custodian of the sub-IRAs should not report as income to Estate, any amounts distributed from the sub-IRAs to C and D; and

3. That the sub-IRAs will constitute separate accounts within the meaning of § 1.401(a)(9)-8, Q&A-2.

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-1(b) provides that the term "income in respect of a decedent" (IRD) refers to those amounts to which a decedent was entitled as gross income, but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous table year under the method of accounting employed by the decedent. Section 1.691(a)-1(c) provides that the term "income in respect of a decedent" also includes the amount of all items of gross income in respect of a prior decedent, if (1) the right to receive such amount was acquired by the decedent by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent and if (2) the amount of gross income in respect of the prior decedent was not properly includible in computing the decedent's taxable income for the taxable year ending with the date of his death or for a previous taxable year.

Section 1.691(a)-4(a) provides that in general, the transferor must include in his gross income for the taxable period in which the transfer occurs the amount of the

consideration, if any, received for the right or the fair market value of the right at the time of the transfer, whichever is greater.

Section 1.691(a)-4(b) provides that if the estate of a decedent or any person transmits the right to income in respect of a decedent to another who would be required by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under § 691(a)(1) that is includable in the gross income of the beneficiary for the tax year the distribution is received.

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 § 72.

In general, the payee or distributee, as that term is defined in § 408(d), means the person or entity that is entitled to receive distributions from the IRA.

Section 408(d)(3)(C) explains that an IRA is considered an inherited IRA when the IRA is acquired by a non-spouse beneficiary upon the death of an IRA owner. Amounts distributed from an inherited IRA cannot be rolled over into another IRA. C and D inherited an interest in IRA X. Their interests cannot be rolled over into another IRA.

Rev. Rul. 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in § 408(d). Furthermore, such a transfer does not constitute a rollover distribution. Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary. The beneficiary accomplishing such a post-death trustee to trustee transfer need not be the surviving spouse of a deceased IRA holder.

Neither the Code nor the Income Tax Regulations promulgated under § 401(a)(9) preclude the posthumous division of an IRA into more than one IRA.

Section 408(a)(6) provides, under regulations prescribed by the Secretary, rules similar to the rules of § 401(a)(9) and the incidental death benefit requirements of § 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Section 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), his plan or IRA interest remaining at his death must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

Section 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of her interest has begun in accordance with subparagraph (A)(ii) (before her required beginning date), her plan or IRA interest remaining at her death must be distributed within five years after the death of such employee (IRA holder).

Section 401(a)(9)(B)(iii) provides, in general, for an exception to the 5-year rule (above) with respect to distributions paid to (or for the benefit of) a designated beneficiary of a deceased plan participant or IRA holder. Pursuant to this exception, distributions must begin no later than 1 year of the employee's or IRA holder's death (or such later date as prescribed in regulations), and must be made over the life or life expectancy of the designated beneficiary.

Section 401(a)(9)(B)(iv)(II) explains that if the surviving spouse dies before the distributions to such spouse begin, the distribution rules of 401(a)(9) shall be applied as if the surviving spouse were the employee.

Section 401(a)(9)(C) provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Section 401(a)(9)(E) defines “designated beneficiary” as any individual designated as a beneficiary by an employee (IRA owner).

Section 1.401(a)(9)-3, Q&A-5, provides that, pursuant to § 401(a)(9)(B)(iv)(II), if the surviving spouse is the employee's sole designated beneficiary and dies after the employee, but before distributions to such spouse have begun under § 401(a)(9)(B)(iii) and (iv), the 5-year rule in § 401(a)(9)(B)(ii) and the life expectancy rule in

§ 401(a)(9)(B)(iii) are to be applied as if the surviving spouse were the employee. In applying this rule, the date of death of the surviving spouse shall be substituted for the date of death of the employee. However, in such case, the rules in § 401(a)(9)(B)(iv) are not available to the surviving spouse of the deceased employee's surviving spouse.

Section 1.401(a)(9)-4, Q&A-3, provides, in relevant part, that a person's estate may not be the designated beneficiary of his/her plan interest or IRA.

Section 1.401(a)(9)-8, Q&A-3, defines separate accounts for purposes of § 401(a)(9), as separate portions of an employee's benefit reflecting the separate interests of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investments, gains and losses, contributions, and forfeitures for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts.

Section 1.401(a)(9)-8, Qs&As-2 and 3, provide the rules that apply if the benefit attributable to a deceased qualified plan participant is divided into separate accounts for purposes of § 401(a)(9). The regulations stipulate that in order to have § 401(a)(9) apply separately to each account, each separate account must be established on a date no later than the last day of the year following the calendar year of the employee's death.

In this case, as noted above, A died after attaining his "required beginning date" as that term is defined in § 401(a)(9)(C) as the owner of IRA X. B was the surviving spouse of A, and was the sole designated beneficiary of IRA X.

B died shortly after A, before any distributions from IRA X were made to her, and without having elected to treat IRA X as her own IRA. Accordingly, § 401(a)(9)(iv)(II) is applicable to distributions from IRA X.

As of her date of death, B had not attained her "required beginning date" with respect to IRA X. Furthermore, B had not named any beneficiaries of her interest in IRA X except through her will. C and D, who inherited B's interest in IRA X, cannot be "designated beneficiaries", as that term is defined in § 401(a)(9)(E), of said interest. Thus, with respect to B's IRA X interest, § 401(a)(9)(B)(ii) is applicable.

It is proposed that IRA X be subdivided into two-sub IRAs, one of which will benefit C, a beneficiary under B's will, and the other of which will benefit D, another beneficiary of B's will. The subdivision will be made by means of two trustee-to-trustee transfers pursuant to Rev. Rul. 78-406. Thus, no distributions will be made from IRA X to accomplish its sub-division.

However, although the subdivision of IRA X comes within Rev. Rul. 78-406, said subdivision does not result in the creation of two "separate accounts" for purposes of § 401(a)(9). Required distributions from the two sub-IRAs must be made pursuant to the 5-year rule of § 401(a)(9)(B)(ii).

Based solely on the facts and representations submitted, we conclude the following:

1. The division of IRA X and establishment of the two sub-IRAs will not constitute a transfer within the meaning of § 691(a)(2). C and D will each include, in their gross income, the amounts of IRD from their respective sub-IRA when the distribution or distributions from the sub-IRAs are received by C and D, respectively.

2. The division of IRA X and establishment of the two sub-IRAs will not constitute distributions within the meaning of § 408(d)(1) or rollovers within the meaning of § 408(d)(3).

3. After the division of IRA X and establishment of the two sub-IRAs, C and D will be the payees or distributees of amounts distributed from IRA X, pursuant to § 408(d)(1). As a result, Estate will not include in its gross income, and the custodian of the sub-IRAs should not report as income to Estate, any amounts distributed from the sub-IRAs to C and D; and

4. Separate sub-IRAs may be created for C and D, maintained in the name of A for their benefit, for individual investment purposes but not for the purposes of determining the applicable distribution period required by § 401(a)(9). B died without designating a beneficiary of her interest in A's IRA X. Thus, as explained above, IRA X, even when subdivided, must be distributed in accordance with the 5-year rule as explained in § 409(a)(9)(B)(ii).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any of the provisions of the Code or regulations. This letter does assume, however, that IRA X, and the resultant sub-IRAs, either satisfied, satisfy, or will satisfy, the requirements of § 408 at all times relevant 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 as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to Estate's authorized representative.

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: (2)
Copy of this letter
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cc: