TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 31 2011

Uniform Issue List: 408.01-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Decedent B =

IRA C =

Financial Institution D =

Trust E =

State F =

Company G =

IRA H =

Dear

This letter is in response to a request for a letter ruling dated May 20, 2009, as supplemented by E-Mail correspondence dated August 14, August 25, August 26, 20 . December 10, December 29, 20 and February 2, and 11, and March 10, 20 submitted by your authorized representatives, concerning the proper treatment of a distribution from Decedent B's individual retirement account ("IRA H") under section 408(d)(3) of the Internal Revenue Code ("Code") .

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

Decedent B was born on ********* and died on **********, while a resident of State F. State F is a community property state. Taxpayer A, who was married to Decedent B for twenty-one years, was born on **********. At the time of his death, Decedent B maintained IRA C with Financial Institution D. Decedent B had not named a beneficiary for IRA C. Pursuant to the default provisions of IRA C, the beneficiary thereof is Decedent B's estate.

On **********, Taxpayer A and Decedent B ("Trustmakers" pursuant to Article One, Section 1) executed a revocable trust declaration creating Trust E with Company G. Initially, Taxpayer A and Decedent B were the co-Trustees of Trust E. Pursuant to Article 15, Section 3(d) of Trust E, at the death of Decedent B, Taxpayer A and Company G became the co-Trustees of Trust E.

Dededent B died testate and under his Last Will and Testament (Will) (Article Three, Section 1) left all of his property of whatever nature and kind in his estate to Trust E. The residue of Decedent B's estate included IRA C. At the time of Decedent B's death, Taxpayer A and Decedent B resided in State F. Property law of State F provides that Taxpayer A is entitled to one-half of the assets in IRA C.

Article Eight, Section 1 of Trust E provides that "upon the death of the first one of us to die, our Trustee shall divide the trust property into two separate trusts, to be known as the Marital Trust and the Family Trust." Article Eight, Section 1a of Trust E provides "the Marital Trust shall consist of the surviving Trustmaker's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Marital Trust shall be the fractional share of the deceased Trustmaker's Trust Property."

Article Four of Trust E generally provides that the Trustee is empowered to do all things appropriate for the orderly administration of the trust estate.

Article Nine, Section 1a of Trust E provides "our Trustee shall allocate all of the surviving Trustmaker's separate portion of the trust property and all of the surviving Trustmaker's community portion of the trust property, if any, to Marital Share One."

Article Nine, Section 1b of Trust E provides "Marital Share Two and Three shall consist of the deceased Trustmaker's property passing to the Marital Trust, which shall be allocated between these shares as provided in Section 2 of this Article."

Article Nine, Section 3b, of Trust E provides that "our Trustee shall pay to or apply for the benefit of the surviving Trustmaker such amounts from the principal of Marital Share One as the surviving Trustmaker may at any time request in writing. No limitation shall be placed on the surviving Trustmaker as to either the amount of or reason for such invasion of principal".

Article Nine, Section 6a, of Trust E provides, in summary, that the trustees of Trust E may elect to receive distributions from any qualified retirement plan, including an individual retirement arrangement, for which Trust E is named as beneficiary, either in installments or in a lump sum.

Article 17, Section 3f of Trust E provides that "our Trustee is specifically authorized to make divisions and distributions of the trust property either in cash or in kind, or partly in cash and partly in kind, or in any proportion it deems advisable. It shall be under no obligation or responsibility to make pro rata divisions and distributions in kind. Our Trustee may allocate specific property to any beneficiary or share although the property may differ in kind from the property allocated to any other beneficiary or share."

Article 18, Section 11e of Trust E provides that "the validity of this trust shall be determined by reference to the laws of State F."

Section 113.027 of Title 9 of the State F Property Code for Trusts provides: When distributing trust property or dividing or terminating a trust, a trustee may: (1) make distributions in divided or undivided interests; (2) allocate particular assets in proportionate or disproportionate shares; (3) value the trust property for the purpose of acting under Subdivision (1) or (2); and (4) adjust the distribution, division, or termination for resulting differences in valuation.

In accordance with Article Nine, Section 1a of Trust E, Taxpayer A's one-half of IRA C (her community property interest in said IRA C) was allocated to the Marital Trust created under the provisions of Trust E and further allocated to Marital Share One. In **********, as part of the initial funding of the Family and Marital sub-Trusts of Trust E, and pursuant to Section 113.027 of Title 9 of the State F Property Code and Article 17, Section 3f of Trust E, the Trustee and Taxpayer A, individually, exchanged community property interests, including Decedent B's community property interest in IRA C, such that the entirety of the IRA was the property of Taxpayer A. Decedent B's community property interest in IRA C was exchanged for Taxpayer A's community property interest in an asset of equivalent value. Pursuant to Article Nine, Section 1b of Trust E, the Trustee allocated to Marital Shares Two and Three all of Decedent B's property passing to the Marital Trust. The entire account balance of IRA C was now allocated to Marital Share One. On **********, in order to satisfy the required minimum distribution rules of section 401(a)(9) of the Code and pursuant to the terms of Trust E, all of the assets of IRA C were transferred in a trustee-to-trustee transfer into an IRA in the estate's name (IRA H) with Financial Institution D.

Based on the above facts and representations, you request the following rulings:

1) IRA H will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Taxpayer A.

2) Taxpayer A is eligible to roll over or have transferred, by means of a trustee-to-trustee transfer, the proceeds of IRA H into an IRA set up and maintained in her own name, either with the present custodian or to a different custodian, as long as the rollover of such distribution occurs no later than the 60th day from the date said proceeds of IRA H are distributed to the trustees of Trust E.

3) Taxpayer A will not be required to include in gross income for federal income tax purposes, in the year of distribution, any portion of the proceeds distributed from

IRA H which are subsequently rolled over or transferred pursuant to the second ruling (above) from IRA H into an IRA set up and maintained in her own name.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided, 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)(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) 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 date 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) of the Code).

Section 408(d)(3)(C)(i) of the Code provides, in summary, 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.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up an maintained in the name of the surviving spouse.

Section 408(d)(3)(E) of the Code provides, generally, that section 408(d) does not apply to any amount required to be distributed pursuant to section 408(a)(6).

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code sections 401(a)(9) and 408(a)(6) (see also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 Question and Answer 5 of the regulations provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own

IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from a deceased spouse's IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

Generally, if the proceeds of a decedent's IRA are payable to either a trust or an estate (or both), and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, shall not be eligible to roll over the distributed IRA proceeds into her own IRA. However, the general rule will not apply in a case where, even though the surviving spouse is not the sole trustee of the decedent's trust, she has sole authority and discretion under the trust language to pay the IRA proceeds to herself. In such a case, the surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

In this case, although Decedent B had not named a beneficiary for his IRA, under the default provisions of IRA C, his estate became the beneficiary thereof. Pursuant to his Will, Decedent B left the residue of his estate, including IRA C (now renamed IRA H), to Trust E. Taxpayer A is a co-Trustee of Trust E and Decedent B's surviving spouse.

Additionally, with respect to any Code section 408(g) implications, the Service notes that under the property laws of State F, IRA C (now renamed IRA H) constituted community property at the death of Decedent B. Furthermore, State F property law also governed the interpretation of Trust E. Pursuant to the language of Trust E, one-half of IRA C had to be allocated to the Marital Trust and further allocated to Marital Share One. The co-Trustee and Taxpayer A, individually, exchanged community property interests, including Decedent B's community property interest in IRA C, such that the entirety of the IRA was the property of Taxpayer A. Decedent B's community property interest in IRA C was exchanged for Taxpayer A's community property interest in an asset of equivalent value. The entire account balance of IRA C was now allocated to Marital Share One. The Service notes that determining if IRA C was/is community property and, as such, which of the sub-trusts was to receive IRA C lies outside the scope of Code section 408.

Once IRA C (now renamed IRA H) is properly allocated to Marital Share One pursuant to the terms of Trust E and the property law of State F, the Service must apply the requirements of Code section 408 to determine whether IRA C (now renamed IRA H) may be contributed into an IRA set up and maintained in the name of Taxpayer A.

On **********, all the assets in IRA C were transferred to IRA H as a trustee-to-trustee transfer. The co-Trustees of Trust E intend to demand a single sum payment of the entire account balance of IRA H which is authorized by Article Nine, Section 6a of Trust E. The co-Trustees of Trust E will then pay to Taxpayer A the entire account balance of IRA H upon her request for payment. The co-Tustees have no discretion with respect to such payment since the language of Trust E allows Taxpayer A to request payment to herself of all, or a portion, of the principal of Marital Share One of Trust E. Taxpayer A then intends to transfer, by means of a rollover contribution, the entire account balance of IRA H to a separate IRA, set up and maintained in Taxpayer A's name no later than the 60th day from the date the IRA H proceeds are distributed to the co-Trustees of Trust E.

We note that under the facts stated above, the provisions of Trust E give Taxpayer A the right to receive all, or any portion, of the principal of Marital Share One, which includes IRA H, upon her request for payment. The co-Trustees of Trust E have no authority to prevent Taxpayer A from receiving IRA H. Under this set of facts, we believe it is appropriate to treat Taxpayer A as the payee and beneficiary of IRA H for purposes of sections 408(d)(1) and 408(d)(3) of the Code.

Therefore, with respect to your ruling requests, we conclude that:

1) IRA H will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Taxpayer A.

2) Taxpayer A is eligible to roll over or have transferred, by means of a trustee-to-trustee transfer, the proceeds of IRA H into an IRA set up and maintained in her own name, either with the present custodian or to a different custodian, as long as the rollover of such distribution occurs no later than the 60th day from the date said proceeds of IRA H are distributed to the trustees of Trust E.

3) Taxpayer A will not be required to include in gross income for federal income tax purposes, in the year of distribution, any portion of the proceeds distributed from IRA H which are subsequently rolled over or transferred pursuant to the second ruling (above) from IRA H into an IRA set up and maintained in her own name.

This letter ruling assumes that IRA C and the recipient IRA (IRA H) set up and maintained in the name of Taxpayer B's estate meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that IRAs C and H are community property as represented, and that the rollover IRA to be set up by Taxpayer A will meet the requirements of Code section 408(a) at all times relevant thereto. Finally it assumes that Taxpayer A's rollover of the IRA H distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i). This letter ruling does not authorize Taxpayer A's contribution of amounts required to be distributed under Code section 401(a)(9), applicable to IRAs pursuant to Code section 408(a)(6) (if any), into her rollover IRA.

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 regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited 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 wish to inquire about this ruling, please contact (I.D. #), at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: