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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 07 2011

Uniform Issue List: 402.00-00

T:EP:RA:T1

Legend:

Taxpayer A =

Plan B =

Financial Institution C =

Court D =

Decedent E =

Individual F =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Amount 7 =

Amount 8 =

Amount 9 =

Amount 10 =

Amount 11 =

Dear :

This letter is in response to a request for a letter ruling dated November 22, 2010, made on behalf of Taxpayer A, as modified and supplemented by additional correspondence dated January 26, March 1, and March 25, 2011, from your authorized representative, concerning the proper treatment of the distribution of Amount 1 from Decedent E's qualified retirement plan under section 402(c)(11) of the Internal Revenue Code ("Code").

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

Taxpayer A is the daughter of Decedent E. Decedent E, who died on September 3, 2008, was not married at this time. Taxpayer A, age 13, was named sole beneficiary of Decedent E's entire interest in a qualified retirement plan (Plan B). Although a minor child, Taxpayer A was entitled, under section 402(c)(11) of the Code, to have a direct trustee-to-trustee transfer made of Decedent E's entire account balance in Plan B to an individual retirement account (IRA) set up in her own name. Individual F, the guardian and mother of Taxpayer A, made no attempt to make a direct transfer of Decedent E's account balance from Plan B to such an IRA on Taxpayer A's behalf. Instead, on November 19, 2008, Individual F filed paperwork with the plan administrator to receive a lump sum distribution of Decedent E's entire account balance in Plan B. Amount 1 was reported on Taxpayer A's 2008 federal income tax return and she paid the corresponding tax liability.

A conservatorship petition was filed in Court D for the estate of Taxpayer A. On May 28, 2009, Financial Institution C was appointed conservator of the estate. A suit was brought before Court D to contest the lump sum distribution received by Individual F from Plan B. On June 19, 2009, a statement by Individual F and list of expenditures was filed in connection with these proceedings. In her statement, Individual F stated that on December 5, 2008, she received the sum of Amount 3 from Plan B which equaled Amount 1 reduced by withholding of Amount 4. Individual F also stated that out of the original distribution of Amount 3, additional federal income tax of Amount 8 was paid and state income tax of Amount 9 was paid, thereby reducing the net distribution after tax to Amount 10.

On August 13, 2009, Court D ordered Individual F to reimburse Amount 2 to the conservator of Taxpayer A because Individual F had inappropriately spent the funds. Court D arrived at Amount 2 after accepting certain expenditures made by

Individual F for personal expenses of Taxpayer A (Amount 11), thereby reducing the net after tax distribution of Amount 10 by Amount 11, resulting in Amount 2. Individual F was given 120 days to comply with the August 13, 2009 court order. It was also ordered that the conservator seek assistance in determining whether Taxpayer A could amend her 2008 federal and state income tax returns to recoup the taxes paid. On March 24, 2010, Court D found that Individual F was in contempt for failure to reimburse Amount 2 to Taxpayer A, as specified in the court order dated August 13, 2009. Individual F was given 60 days from the February 8, 2010 hearing date to reimburse Amount 2 to the conservator of Taxpayer A.

As of March 1, 2011, Individual F has reimbursed Amount 5 to the conservator of Taxpayer A, which amount has been deposited in a non-interest bearing account. There is a priority judgment claim against Individual F outstanding in the amount of Amount 6, which is to be paid back at the rate of Amount 7 per month.

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

1) Taxpayer A is eligible to have transferred, by means of a trustee-to-trustee transfer, within the meaning of section 402(c)(11) of the Code, Decedent E's interest in Plan B (Amount 1) into an IRA set up and maintained in her own name, either with the present custodian or to a different custodian.

2) Taxpayer A will not be required to include in gross income for federal income tax purposes for the 2008 year in which the distribution (Amount 1) from Plan B occurred and for the year in which the subsequent transfer is made pursuant to ruling number 1) above, any portion of the amounts transferred from Plan B into an IRA set up and maintained in her own name.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(11) of the Code provides if, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph 8(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee – (i) the transfer shall be treated as an eligible rollover distribution, (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and (iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

Section 408(d)(3)(C)(ii) of the Code provides that an individual retirement account or individual retirement 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 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Section 6903(a) of the Code provides, "Upon notice to the Secretary that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated."

Section 7701(a)(6) of the Code defines fiduciary as a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in a fiduciary capacity for any person.

Taxpayer A is the daughter of Decedent E and the sole designated beneficiary of his account balance in Plan B. Therefore, Taxpayer A was entitled to have a direct trustee-to-trustee transfer made of Decedent E's account balance from Plan B to an IRA set up in her own name. But for the decision by Individual F, acting as Taxpayer A's legal guardian at the time, to receive a lump sum distribution of Decedent E's account balance in Plan B and her subsequent misuse of the funds she received, a tax free transfer of Decedent E's account balance could have been made to an inherited IRA for the benefit of Taxpayer A in accordance with section 402(c)(11) of the Code.

Therefore, pursuant to section 402(c)(11) of the Code, the Service hereby rules:

1) Taxpayer A is eligible to have transferred, by means of a trustee-to-trustee transfer, within the meaning of section 402(c)(11) of the Code, the court ordered reimbursement (Amount 2) and the amount of any refund of federal and state taxes due to amending Taxpayer A's 2008 tax returns, into an IRA set up and maintained in her own name, either with the present custodian or to a different custodian, which will be treated as an inherited IRA within the meaning of section 408(d)(3)(C) of the Code.

2) Taxpayer A will not be required to include in gross income for federal income tax purposes for the 2008 year in which the distribution (Amount 1) from Plan B

occurred and for the year in which the subsequent transfer is made pursuant to ruling number 1) above, any portion of the amounts transferred from Plan B into an IRA set up and maintained in her own name.

Please note that the scope of the conservator's powers is a matter of state law. The conservator's ability to direct a trustee-to-trustee transfer of assets maintained on behalf of Taxpayer A to an IRA set up in the name of Taxpayer A is not a question of federal tax law, and the Service lacks the authority to determine the powers of the conservator. Assuming the applicable state law allows the conservator to take such action, the federal tax law question is whether the deposit into the IRA is a rollover contribution.

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 the taxpayer herself and 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: