TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201436054

JUN 13 2014

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

Decedent B =

IRA X =

Individual C =

Decedent D =

Custodian E =

Custodian F =

Account Y =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to your request dated November 16, 2012, from your authorized representative, in which Taxpayer A, the Estate of Decedent D, requests rulings under section 408 of the Internal Revenue Code (the "Code"). Individual C is the executor of the Estate of Decedent D.

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

Prior to her death, Decedent B maintained Individual Retirement Account ("IRA") X held with Custodian E. Decedent D, then still alive, was the husband of Decedent B and was the named beneficiary of IRA X.

Decedent B predeceased Decedent D. Decedent B died on January 3, 2001, without having reached age 70 ½. Individual C was executor of Decedent B's estate. The value of IRA X as of January 3, 2001, was Amount 1.

On April 18, 2001, Decedent D, then still alive, was declared to be an incapacitated person in need of plenary guardianship services for his personal and financial needs. Individual C was named Plenary Guardian of the Estate of Decedent D.

As described below, the funds of IRA X were transferred to Account Y at Custodian F without proper authorization. On August 9, 2002, Individual C signed the IRA X transfer forms as "Individual C, Executrix," in her capacity as executor of Decedent B's estate, rather than in her capacity as Plenary Guardian of the Estate of Decedent D, on behalf of Decedent D, then still alive, the sole beneficiary of IRA X. Decedent B's estate was not a beneficiary of IRA X and the executor had no authority to transfer the funds.

In addition, IRA X was transferred to an account incorrectly titled in the name of the Estate of Decedent B. Individual C completed the IRA X transfer forms to improperly provide for Account Y with Custodian F to be an IRA titled: "Estate of Decedent B for the benefit of Decedent D." Taxpayer A represents that the transfer form listed the Employer ID number for the Estate of Decedent B. On August 22, 2002, Individual C, listing her occupation as "Attorney," completed an "IRA Account Application" with Custodian F. Individual C listed "Individual C, Executrix" as the Account Holder. Under the Type of IRA, Individual C selected "Inherited IRA" rather than the other option of "Spousal Rollover IRA."

On September 3, 2002, the funds from IRA X were transferred in a direct transfer from Custodian E to Account Y at Custodian F. Taxpayer A represents that in 2002 neither Custodian E nor Custodian F recognized the errors in the improper transfer, and Custodian F treated Account Y as if it were an IRA.

Prior to his death, Decedent D did not take any distributions from Account Y. Decedent D died on August 4, 2008, without having reached age 70 ½. Individual C was the executor of Decedent D's estate. The Estate of Decedent D treated Account Y as an asset of Decedent D. The first distribution from Account Y was for Amount 2 on March 21, 2011, and the second distribution was made on December 22, 2011, for Amount 3. Custodian F reported the two 2011 distributions on one Form 1099-R as being made to the Estate of Decedent B. Taxpayer A, however, had reported Amount 2 as other income for the Estate of Decedent D.

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

1. That the transfer of IRA X from Custodian E to Custodian F was not a distribution or payment as those terms are used in section 408(d) of the Code and instead was a trustee-to-trustee transfer that satisfied the requirements of Revenue Ruling 78-406, 1978-2 C.B. 157 ("Rev. Rul. 78-406");

2. That the trustee-to-trustee transfer of IRA X from Custodian E to Custodian F constituted an election by Decedent D to treat IRA X as his own IRA pursuant to section 1.408-8, Q&A-5(a) of the Income Tax Regulations ("Regulations"); and

3. In the event that the transfer of IRA X from Custodian E to Custodian F did not constitute an election by Decedent D to treat IRA X as his own, that Decedent D was deemed to have elected to treat IRA X as his own on December 31, 2006, pursuant to section 1.408-8, Q&A-5(b)(1) of the Regulations.

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.

For purposes of section 408(d)(3) of the Code, a rollover contribution is an amount that meets the requirements of sections 408(d)(3)(A) and (B).

Section 408(d)(3)(A) 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 IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA or individual retirement annuity (other than an endowment contract) 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 or individual retirement annuity other than an endowment contract) 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)).

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 or individual retirement annuity which was not includible in gross income because of the application of section 408(d)(3).

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 or individual retirement annuity shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA or individual retirement annuity for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as an "inherited IRA" if the individual for whose benefit the IRA is maintained, other than the IRA owner's spouse, acquired the IRA by reason of the death of another individual.

Section 1.408-8, Q&A-5(a) 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.

Section 1.408-8, Q&A-5(b) of the Regulations provides that the election described in paragraph A-5(a) is made by the surviving spouse redesignating the account as an account in the name of the surviving spouse as IRA owner rather than as beneficiary. Alternatively, a surviving spouse will be deemed to have made the election if, at any time, either of the following occurs:

(1) Any amount in the IRA that would be required to be distributed to the surviving spouse as beneficiary under section 401(a)(9)(B) of the Code is not distributed within the time period required under section 401(a)(9)(B); or

(2) Any additional amount is contributed to the IRA which is subject, or deemed to be subject, to the lifetime distribution requirements of section 401(a)(9)(A) of the Code.

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

Section 1.408-8, Q&A-1(a) of the Regulations, provides that, except as otherwise provided, for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, IRAs are subject to the regulations regarding required minimum distributions from defined contribution plans under sections 1.401(a)(9)-1 through 1.401(a)(9)-9, and 1.401(a)(9)-6.

Section 401(a)(9)(B) of the Code provides that if an IRA owner dies before the distribution of his interest has begun in accordance with section 401(a)(9)(A)(ii) (triggered by the IRA owner's required beginning date), his entire interest in the IRA must be distributed either (a) within 5 years of the IRA owner's death (under section 401(a)(9)(B)(ii)); or (b) over the life (or over a period not extending beyond the life expectancy) of a designated beneficiary commencing not later than 1 year after the death of the IRA owner (under section 401(a)(9)(B)(iii)).

Section 1.401(a)(9)-3, Q&A-2 of the Regulations, provides that in order to satisfy the 5-year rule contained in section 401(a)(9)(B)(ii) of the Code, the IRA owner's entire interest must be distributed by the end of the calendar year which contains the fifth anniversary of the IRA owner's death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of section 401(a)(9)(A)(ii), the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA owner attains age 70 ½.

Section 1.401(a)(9)-4, Q&A-1 of the Regulations defines "designated beneficiary" as any individual designated as a beneficiary under the IRA.

Rev. Rul. 78-406 addressed the direct transfer of funds from one IRA trustee to another IRA trustee where both IRAs were held by the same IRA owner, and provided that the transfer did not constitute a payment or distribution includible in the gross income of the IRA owner.

With respect to ruling request 1, Taxpayer A requests a ruling that the transfer of IRA X from Custodian E to Custodian F was not a distribution or payment as those terms are used in section 408(d) of the Code and instead the transfer of IRA X was a

trustee-to-trustee transfer that satisfied the requirements of Rev. Rul. 78-406. 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. Taxpayer A has not provided a basis for the transfer to fall under the exceptions in section 408(d) of the Code. Among other things, Rev. Rul. 78-406 does not support transfer of IRA X to an individual or entity without ownership rights. Decedent D, then still alive, had rights as beneficiary of IRA X. However, the Estate of Decedent B had no ownership rights to IRA X. Thus, the unauthorized transfer of Decedent B's IRA X with named beneficiary Decedent D, to Account Y for the benefit of the Estate of Decedent B for the benefit of Decedent D, was not a trustee-to-trustee transfer within the scope of Rev. Rul. 78-406. Thus, the Service concludes that the transfer of IRA X from Custodian E to Custodian F constituted a distribution or payment as those terms are used in section 408(d) of the Code and did not constitute a trustee-to-trustee transfer that satisfied the requirements of Rev. Rul. 78-406.

With respect to ruling request 2, section 1.408-8, Q&A-5(a) of the Regulations provides that prior to his death, Decedent D, the surviving spouse of IRA owner Decedent B, could have elected to treat Decedent D's entire interest as a beneficiary in IRA X as Decedent D's own IRA. Section 1.408-8, Q&A-5(b) of the Regulations provides that the election would have been made by Decedent D, the surviving spouse, redesignating IRA X as an account in the name of Decedent D as IRA X owner rather than as beneficiary. However, there was no such election or action by Decedent D or by Individual C in her capacity as his guardian; rather, Individual C acted in her capacity as executor of Decedent B's estate and affirmatively elected to establish Account Y as an "inherited IRA" of Estate of Decedent B rather than selecting a "spousal rollover IRA," Decedent D's own IRA. Thus, with respect to requested ruling 2, the Service concludes that the transfer of the funds of IRA X from Custodian E to Custodian F did not constitute an election by Decedent D to treat IRA X as his own IRA pursuant to section 1.408-8, Q&A-5(a) of the Regulations.

With respect to ruling request 3, section 1.408-8, Q&A-5(b) of the Regulations provides that Decedent D, a surviving spouse, would have been deemed to have made the election redesignating IRA X as an account in the name of Decedent D as IRA owner rather than as beneficiary if, at any time, any amount in IRA X that would be required to be distributed to Decedent D as beneficiary under section 401(a)(9)(B) of the Code was not distributed within the time period required under section 401(a)(9)(B). Taxpayer A requests that the Service rule that Decedent D was deemed to have elected to treat IRA X as his own on December 31, 2006, pursuant to section 1.408-8, Q&A-5(b)(1) of the Regulations. Since the funds in IRA X were transferred from Custodian E to Account Y maintained with Custodian F on September 3, 2002, there were no assets in IRA X on December 31, 2006, and accordingly no assets were subject to the required minimum distribution rules of section 401(a)(9)(B) of the Code. Thus, with respect to requested ruling 3, the Service concludes that Decedent D would not be deemed to

have elected to treat IRA X as his own on December 31, 2006, pursuant to section 1.408-8, Q&A-5(b)(1) of the Regulations.

No opinion is expressed as to the tax treatment of the transactions described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

If you wish to inquire about this ruling, please contact (ID) at ( ) - . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: