

IRS RULES SPOUSE MAY ROLLOVER IRA AMOUNTS FROM TRUST

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Employee Benefits

A trust was designated as the beneficiary of a decedent's seven Roth IRAs and one traditional IRA. There were several subtrusts established under the trust. The survivor's subtrust was primarily designed to benefit the decedent's surviving spouse. The surviving spouse, as trustee of the survivor's subtrust, allocated the entirety of four of the Roth IRAs, and one-half of the remaining Roth IRAs and the traditional IRA, to the survivor's subtrust.

The surviving spouse wished to establish her own Roth and traditional IRAs for purposes of rolling over any distributions of the IRA amounts held by the survivor's subtrust (other than required minimum distributions for any year through the year the rollover occurred). In response to the surviving spouse's request for a private letter ruling, the IRS ruled as follows:

1. Under Section 408(d)(3) of the Internal Revenue Code, an individual may not rollover a distribution from an inherited IRA. An IRA is considered an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another person, and the surviving individual is not the surviving spouse of the decedent. The IRS ruled that the decedent's IRAs would not be treated as inherited IRAs with respect to the surviving spouse, as the surviving spouse was effectively the beneficiary of the decedent's IRAs. As a result, if the surviving spouse received a distribution from the survivor's subtrust attributable to the decedent's IRAs, the surviving spouse would be permitted to rollover the distribution to her own Roth or traditional IRA, as applicable.
2. Treasury Regulation Section 1.408-8, Q&A 5, provides that a surviving spouse of an individual may elect to treat the spouse's entire interest as a beneficiary in the individual's IRA as the spouse's own IRA. However, 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. Accordingly, since the surviving spouse was not the sole designated beneficiary of the decedent's IRAs, the IRS ruled that the surviving spouse could not treat the decedent's IRAs as the surviving spouse's own.

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3. Section 408(d)(3)(B) of the Internal Revenue Code generally limits a taxpayer to one rollover during any 12-month period. Accordingly, the trust would generally need to consolidate the Roth IRAs into a single Roth IRA by means of a trustee-to-trustee transfer before making any distributions.
4. The surviving spouse would be permitted to exclude any distributions from the IRAs that were timely rolled over to her own IRAs, subject to the one rollover per year rule.
5. Beginning with the year following the year in which the surviving spouse rolled over a Roth IRA distribution to the surviving spouse's own Roth IRA, the surviving spouse would not be required to take any required minimum distributions from the surviving spouse's own Roth IRA.
6. Beginning with the year following the year in which the surviving spouse rolls over a distribution from decedent's traditional IRA to the surviving spouse's own IRA, required minimum distributions from the surviving spouse's traditional IRA would be calculated based on the surviving spouse being the IRA owner.

The IRS's ruling raises a number of potential planning options. For example, by rolling amounts over to a surviving spouse's own IRA, the surviving spouse may designate his or her own beneficiaries. In addition, under this approach, it may be possible to delay or lengthen the period over which required minimum distributions may be taken. (PLR 201707001)