



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

201243017

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 31 2012

Uniform Issue List: 402.00-00

T:EP:RA:TB

Legend:

- Taxpayer A = ***
- Executrix M = ***
- Airline B = ***
- IRA X = ***

- Plan Z = ***

- Plan Y = ***
- Court B = ***

- Amount A = ***
- Amount B = ***
- State P = ***
- Date 1 = ***
- Date 2 = ***
- Date 3 = ***

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Date 4 = * * *

Date 5 = * * *

Dear * * *:

This is in response to your ruling request dated January 29, 2010, as supplemented by correspondence dated June 22, 2011, and February 17, 2012, submitted by your authorized representative, in which you, as the Court Appointed Executrix of Taxpayer A, request rulings under section 125 of the Worker, Retiree and Employee Recovery Act of 2008 (WRERA).

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

Executrix M, age 63, is the surviving spouse of Taxpayer A and Executrix of his estate. Executrix M represents that Taxpayer A was formerly employed as a pilot for Airline B, and was a participant in both Plan Z, a plan intended to be qualified under section 401(a) of the Internal Revenue Code (Code), and Plan Y, a nonqualified plan that Airline B maintained for its pilots. Airline B entered into bankruptcy proceedings on Date 1 and filed for a distress termination of Plan Z, which was ultimately approved by the Pension Benefit Guaranty Corporation. On Date 2, Airline B terminated both Plan Z and Plan Y. Several years after the termination of Plan Z and Plan Y Congress passed WRERA.

Taxpayer A died testate on Date 3. The Last Will and Testament of Taxpayer A designated Executrix M as Executrix of his estate. Executrix M asserts that, on Date 4, she was granted Letters of Testamentary issued by Court B located in State P.

During the period 2006 to 2007 Airline B distributed a total of Amount A from Plan Y to the estate of Taxpayer A. Amount A was paid by Airline B pursuant to an order of a Federal bankruptcy court.

In 2009, Executrix M received Form 8935, Airline Payments Report, from Airline B which explains a qualified airline employee's rights under section 125 of WRERA. Form 8935 also listed the total amount of airline pension distributions eligible to be rolled over into a Roth individual retirement account (Roth IRA) under WRERA as Amount A. On December 23, 2008, WRERA was signed into law and allows a qualified airline employee who receives an airline payment amount 180 days (or before June 23, 2009) to transfer the airline payment to a Roth IRA. If the transfer is completed timely, the contribution is to be treated as a qualified rollover contribution described in section 408A(e) of the Code.

In accordance with the instructions on Form 8935, on Date 5, Executrix M established IRA X, a Roth IRA, in the name of Taxpayer A into which she transferred Amount B. The difference between Amount A and Amount B represents losses between the time of receiving the distribution and the time the distribution was deposited into IRA X. Amount B currently remains in IRA X. Executrix M states that if she receives a favorable ruling she will roll over the funds in IRA X into a Roth IRA in her name.

Based upon the foregoing facts and representations, you request the following rulings:

1. That the distributions received by the estate after Taxpayer A's death were eligible to be transferred to a Roth IRA under section 125 of WREERA.
2. That Executrix M's actions in establishing the Roth IRA and transferring these assets on behalf of the estate were an appropriate interpretation of section 125 of WREERA.
3. That Executrix M, as Taxpayer A's spouse and the sole beneficiary of his estate, can treat IRA X as her own and can roll over the proceeds from IRA X into a Roth IRA under her own name, as per Code section 408A(e).

Section 125(a) of WREERA provides that if a qualified airline employee receives any airline payment and transfers any portion of such amount to a Roth IRA within 180 days of receipt or, if later, within 180 days of enactment of the Act, then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Code and the limitations described in section 408A(c)(3) of the Code shall not apply to any such transfer.

Section 125(b)(1) of WREERA provides, in relevant part, that an "airline payment amount" is a payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001 and before January 1, 2007.

Section 125(b)(2) of WREERA provides that the term "qualified airline employee" means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which -- (A) is a plan described in section 401(a) of the Code which includes a trust exempt from tax under section 501(a) of the Code, and (B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006.

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Section 408A(a) of the Code provides that a Roth IRA shall be treated in the same manner as an individual retirement plan.

Section 408A(c)(6)(A) of the Code provides that no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

Section 408A(e) of the Code provides in pertinent part that the term "qualified rollover contribution" includes a rollover from one Roth IRA to another Roth IRA.

Section 1.408-8 of the Income Tax Regulations (Regulations), Q&A-5, 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 section 1.408-8 of the Regulations provides, in relevant part, that a surviving spouse who receives a distribution from an 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.

Form 8935 is a report that is submitted to a recipient and to the Internal Revenue Service by a commercial passenger airline carrier to report payment(s) made to recipients under an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, for interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. A recipient may contribute the payment(s) reported on this form to a Roth IRA within 180 days of the date the payment was received (or, if later, within 180 days of the date of the enactment of WREERA, i.e., before June 23, 2009).

The FAA Modernization and Reform Act of 2012 (FAAMRA) was signed into law on February 14, 2012, and updated WREERA to allow transfers to traditional individual retirement accounts (IRAs) and allow airline employees' surviving spouses to make the transfer allowed under section 125 of WREERA. If an airline payment was paid after an airline employee died the surviving spouse can take all of the actions under WREERA that the airline employee could have taken.

Section 1106(d) of FAAMRA provides that if a qualified airline employee died after receiving an airline payment amount, or if an airline payment amount was paid to the surviving spouse of a qualified airline employee in respect of the qualified airline employee, the surviving spouse of the qualified airline employee

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may take all actions permitted under section 125 of WRERA, or under this section, to the same extent that the qualified airline employee could have done had the qualified airline employee survived. Section 1106(d) of FAAMRA is effective for transfers after the date of enactment of the act (i.e., February 14, 2012) with respect to airline payments amounts paid before, on, or after such date. Transfers of amounts pursuant to FAAMRA must take place within 180 days of receipt of the amount or within 180 days of enactment of the act (i.e. August 12, 2012).

Regarding ruling request number one, section 125(b)(2) of WRERA provides that the term "qualified airline employee" means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which -- (A) is a plan described in section 401(a) of the Code which includes a trust exempt from tax under section 401(a) of the Code and (B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006. As a former employee of Airline B and participant in Plan Z, Taxpayer A was a "qualified airline employee".

Section 125(b)(1) of WRERA provides that an "airline payment amount" is a payment of money or other property payable by a commercial passenger airline carrier to a qualified airline employee (i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001 and before January 1, 2007, and (ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. The amounts paid to Taxpayer A by Airline B from Plan Y are amounts paid under the approval of an order of a Federal bankruptcy court to satisfy Airline B's obligations to Taxpayer A under Plan Y. The bankruptcy case was filed on Date 1, which is after September 11, 2001, and before January 1, 2007. Accordingly, Amount A is an "airline payment amount".

Section 125 of WRERA was enacted to provide some relief to airline employees who lost significant portions of their retirement pensions. It applied to any amounts received by a participant under the approval of an order of a Federal bankruptcy court in a case filed between September 11, 2001 and January 1, 2007. Taxpayer A was a "qualified airline employee" within the meaning of section 125(b)(1) of WRERA.

The estate of Taxpayer A received Amount A as an airline payment amount on behalf of Taxpayer A and set up a Roth IRA on behalf of Taxpayer A. You have represented that the estate, under applicable state law is treated as "standing in the shoes of the decedent," and was thus eligible to create the Roth IRA. Accordingly, with respect to ruling request number one, we conclude that the

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distributions totaling Amount A received by the estate after Taxpayer A's death were eligible to be transferred to such Roth IRA under section 125 of WREERA.

Regarding ruling request number 2, section 125 of WREERA provides that airline payments amounts are treated as a "qualified rollover contribution" only if they are transferred to a Roth IRA within the applicable time period provided under section 125 of WREERA. It has been represented that, in the present case, within the applicable time period, Executrix M, as Executrix of Taxpayer A's estate had the power to establish a Roth IRA in Taxpayer A's name and to transfer Amount A to it on behalf of the estate. IRA X was established on Date 5, which was prior to June 23, 2009. We find that, Executrix M's actions in establishing IRA X and transferring these assets on behalf of the estate were an appropriate interpretation of section 125 of WREERA.

With respect to request number three, section 1.408-8 of the Regulations, Question and Answer 5, 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.

Executrix M, as Taxpayer A's surviving spouse, sole beneficiary of IRA X, and the sole beneficiary of Taxpayer A's estate, may elect to treat her interest as a beneficiary in IRA X as her own IRA. Accordingly, Executrix M can roll over the proceeds from IRA X into a Roth IRA set up and maintained in her own name, as per section 408A(e) of the Code.

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

Please note that for purposes of applying the required minimum distribution rules, any beneficiary of IRA X named by Executrix M will not be treated as a designated beneficiary under section 401(a)(9) of the Code. Section 1.401(a)(9)-4, Q&A-4 of the Regulations, provides that a designated beneficiary must be a beneficiary as of the date of death. Because IRA X did not have a designated beneficiary as of the date of Taxpayer A's death, IRA X does not have a designated beneficiary for purposes of applying the rules under section 401(a)(9) of the Code.

In addition, the scope of the powers of Executrix M to take actions on behalf of the estate of Taxpayer A is a matter of state law rather than a matter of federal tax law. The Service lacks the authority to determine the powers of Executrix M. Our ruling therefore assumes that applicable state law permits Executrix M to take the actions described.

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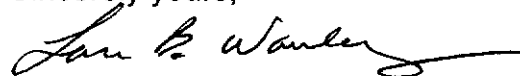
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This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact * * * by phone at * * * or by fax at * * *.

Sincerely yours,



Laura Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

cc: * * *

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