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## Internal Revenue Service

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Person To Contact:  
, ID No.

Telephone Number:

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CC:EEE:EB:QP1  
PLR-135950-18

Date:  
July 25, 2019

In Re:

Taxpayer =  
Decedent =  
Custodian =

Dear \_\_\_\_\_ :

This is in response to your request dated December 5, 2018, as supplemented by additional information dated June 6, 2019, in which your authorized representative requested a private letter ruling on your behalf regarding an Individual Retirement Account (IRA) under section 408 of the Internal Revenue Code for which Taxpayer was named as a beneficiary.

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

Decedent established an IRA ("Original IRA") and named Taxpayer, a charitable organization, as beneficiary of Original IRA. Decedent is now deceased. Taxpayer represents that, in order to distribute amounts currently held in Original IRA to Taxpayer, Custodian requires that Taxpayer create a new IRA ("Transfer IRA") with Custodian to which Custodian would transfer assets from Original IRA directly in a trustee-to-trustee transfer. Distributions could then be made to Taxpayer from Transfer IRA.

The documents used to establish Transfer IRA provide, in relevant part, that the particular type of application is used if an entity is the beneficiary of an IRA and the original account owner is deceased. The paperwork further provides that the original

account owner's name, social security number, date of birth, and date of death must be provided as part of the application. The application used is specific to what Custodian refers to as an "Inherited IRA." For the account funding provisions, the paperwork provides that only listed beneficiaries of an IRA at the time of death of the original IRA owner may transfer amounts to Transfer IRA. The disclosure statement for Transfer IRA provides that no contributions of any kind are permitted to be made to Transfer IRA.

Taxpayer represents that Custodian requires that Transfer IRA be in the name of Taxpayer as owner of Transfer IRA using the Taxpayer Identification Number (TIN) of Taxpayer.

Taxpayer is requesting the following rulings:<sup>1</sup>

1. The new account that is set up by request of Custodian (Transfer IRA) is not an IRA as defined in section 408.
2. The new account (Transfer IRA) is a taxable trust.
3. A distribution from Original IRA to the new account (Transfer IRA) is subject to federal income tax.

#### Applicable Law

Section 408(a) states that the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets certain requirements.

Section 408(d)(1) provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA is 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)(A) provides, in part, that section 408(d)(1) does not apply to an amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received is paid into an IRA for the benefit of that individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution.

Section 408(d)(3)(C) provides, in relevant part, that, in the case of an inherited IRA, section 408(d)(3) does not apply to any amount received by an individual from that inherited IRA.

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<sup>1</sup> Three other rulings were requested. We decline to rule on those other ruling requests pursuant to Section 6.06 of Rev. Proc. 2019-1, 2019-1 IRB 1, which provides that the IRS ordinarily does not issue letter rulings where the request does not address the tax status, liability, or reporting obligations of the requester and section 6.06 of Rev. Proc. 2019-1, which provides that the IRS will not issue a letter ruling or a determination letter on alternative plans of proposed transactions or on hypothetical situations.

Section 408(d)(3)(C)(ii) provides that an IRA is treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual, and the individual is not the surviving spouse of the other individual.

Section 408(e)(1) of the Code states that any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account.

Treas. Reg. 1.408-2(a) provides, in part, that an IRA may be established and maintained by an individual, by an employer for the benefit of his employees, or by an employee association for the benefit of its members.

Treas. Reg. 1.408-2(b)(8) provides that the term “beneficiaries” on whose behalf an individual retirement account is established includes (except where the context indicates otherwise) the estate of the individual, dependents of the individual, and any person designated by the individual to share in the benefits of the account after the death of the individual.

Section 7701(a)(1) provides that the term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the trustee-to-trustee transfer of funds from one IRA maintained for the benefit of an individual to another IRA maintained for the benefit of the same individual does not constitute a payment or distribution includible in gross income.

### Analysis

With regard to the first ruling request, Transfer IRA is created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, consistent with the requirements of section 408(a). Transfer IRA is a new IRA used to facilitate the transfer of assets from an inherited IRA being maintained for the benefit of a beneficiary after the death of the original IRA owner to another IRA being maintained for the benefit of the same beneficiary as beneficiary of the same decedent as the inherited IRA. Custodian requires that the documents establishing Transfer IRA clearly identify Transfer IRA as a type of IRA held by a beneficiary after the death of a specified individual. Transfer IRA is merely a continuation in substance of the inherited IRA from which the transfer is accepted and is not established and maintained by Taxpayer as an original IRA to which Taxpayer can make contributions.

Transfer IRA does not fail to be an IRA merely because certain documents and statements from Custodian suggest that Taxpayer is the “owner” of Transfer IRA and Transfer IRA is associated with the TIN of Taxpayer. After the death of the original IRA

owner, a beneficiary is the person for whose benefit an IRA is maintained and, as a result, often in practice, the beneficiary's TIN is associated with the account in order to facilitate reporting of distributions. Original IRA does not lose its status as an IRA under §1.408-2(a) upon the death of Decedent merely because it is maintained for the benefit of a charitable organization as beneficiary of Decedent. Similarly, Transfer IRA does not fail to be an IRA under §1.408-2(a) merely because it is maintained for the benefit of a charitable organization as beneficiary of Decedent. Transfer IRA is established merely to facilitate a transfer from one IRA maintained for the benefit of a charitable organization as beneficiary of Decedent to another IRA maintained for the benefit of the same charitable organization as beneficiary of the same Decedent (and not as an original IRA to which contributions can be made, subject to the limitations of §1.408-2(a)). In the case of Transfer IRA, although it was established after the death of Decedent, it nevertheless maintains the same legal characteristics and limitations for purposes of section 408 as Original IRA after the death of Decedent, including the fact that it is an IRA maintained for the benefit of Taxpayer as beneficiary of Decedent, as evidenced by the underlying documents relating to Transfer IRA.

In your letter, you also suggest that Transfer IRA does not meet the definition of inherited IRA contained in section 408(d)(3)(C)(ii). The definition of inherited IRA of section 408(d)(3)(C)(ii) is limited in its purpose and is merely intended to prohibit certain individuals from performing rollovers from IRAs. There is nothing in section 408(d)(3)(C)(ii) to suggest that accounts that do not meet that definition of inherited IRA because they are held by non-individual beneficiaries cannot constitute IRAs. Furthermore, non-individuals are permitted to be beneficiaries of IRAs pursuant to §1.408-2(b)(8). In addition, as a non-individual, a charitable organization that is a beneficiary of an IRA is unable to perform a rollover under the general rollover rule of section 408(d)(3)(A), so including IRAs held by non-individual beneficiaries in the definition of inherited IRA in section 408(d)(3)(C)(ii) would be superfluous. Based on the information provided, Transfer IRA does not fail to be a type of IRA described in section 408 (with certain limitations applicable under the Code because it is an IRA held by a beneficiary after the death of the individual who is considered the original IRA owner).

With regard to the second ruling request, we have ruled under the first ruling request that Transfer IRA does not fail to be an IRA described in section 408. Based on the first ruling, together with the assumptions specified in this ruling letter and the representations made with respect to the ruling letter, Transfer IRA meets the requirements of section 408. As a result, Transfer IRA is exempt from taxation under section 408(e)(1).

With regard to the third ruling request, consistent with the underlying rationale of Rev. Rul. 78-406, a direct trustee-to-trustee transfer of assets from Original IRA, an IRA maintained for the benefit of a charitable organization as beneficiary of Decedent, to Transfer IRA, an IRA maintained for the benefit of the same charitable organization as

beneficiary of the same Decedent, does not constitute a payment or distribution includible in gross income.

The rulings contained in this letter are based upon information and representations submitted by your authorized representatives and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05.

This letter assumes that Original IRA satisfies the requirements of section 408. This letter also assumes that, except with respect to those issues specifically ruled upon herein, Transfer IRA otherwise meets the requirements of section 408.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Neil Sandhu  
Senior Technician Reviewer  
Qualified Plans Branch 1  
Office of Associate Chief Counsel  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)

cc: