IRS Approves Spousal IRA Rollover Despite Existence of Trust

The IRS has privately ruled that a surviving spouse can roll over her deceased spouse's IRA — payable to a trust of which she is sole trustee and beneficiary — into her own IRA. Generally, where an IRA beneficiary is a trust, a surviving spouse is barred from treating a decedent's IRA as her own account.

However, in Private Letter Ruling 201844004, the IRS concluded that this rule didn't apply because the surviving spouse was the trustee and sole beneficiary of the trust. It said that she was entitled to all income and the trust's entire corpus.

No Immediate Tax

There's no immediate tax if distributions from an IRA are rolled over to another IRA or other eligible retirement plan (for example, a qualified trust, governmental 457 plan, 403(a) annuity or 403(b) tax-shelter annuity). For the rollover to be tax-free, the amount distributed from the IRA generally must be recontributed to an eligible retirement plan no later than 60 days after the date that the taxpayer received the IRA withdrawal. A distribution rolled over after the 60-day period generally will be taxed and also may be subject to a 10% premature withdrawal penalty tax. Individuals are permitted to make only one nontaxable 60-day rollover between IRAs in any one-year period.

In the case of an inherited IRA, the 60-day rule doesn't apply to any amount received by an individual from such an account. Also, the inherited account isn't treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

IRS regulations state that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary of the IRA as the spouse's own IRA. To make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from it. If a trust is named as beneficiary of the IRA, this requirement isn't satisfied even if the spouse is the trust's sole beneficiary. The required beginning date (RBD) — the date that the surviving spouse must begin taking required minimum distributions (RMDs) — is April 1 of the year following the year that the spouse reaches 70 1/2 years old.

Matter at Hand

The recent IRS private letter ruling involves a surviving spouse who established a revocable living trust. She's the trust's sole trustee and reserves the sole right to amend or revoke it and to distribute all income and the entire corpus for her own benefit.

The decedent was married to the surviving spouse until his death, which took place after the RBD. He maintained an IRA with a custodian and, when he died, the trust was named primary beneficiary. The assets of the decedent's IRA were moved via a trustee-to-trustee transfer, to an IRA for the benefit of the trust.

At this point, the surviving spouse wanted to distribute the IRA assets to herself, as sole beneficiary of the trust. She intended to roll over the distribution into one or more IRAs in her own name.

A trustee-to-trustee transfer of this nature can be appealing for a couple reasons. The surviving spouse can designate her own beneficiaries. She can also calculate RMDs as if she had funded the IRA she inherited. This means that she may be able to defer RMDs if she's under age 70 1/2.

Favorable Opinion

In its ruling, the IRS pointed out that because the decedent's IRA passed to the trust when he died, his surviving spouse can't treat the IRA as her own. After all, the trust, not the spouse, was named the beneficiary. However, the IRS affirmed that the spouse is the trust's trustee and sole beneficiary and is entitled to all income and the entire corpus of the trust. Therefore, she's effectively the individual for whose benefit the account is maintained.

Accordingly, the IRS concluded that if the spouse receives a distribution of the IRA's proceeds, she may roll over the distribution (other than amounts required to be distributed into IRAs established and maintained in her name).

Addressing her specific ruling requests, the IRS concluded that the taxpayer:

1. As the surviving spouse, will be treated as having acquired the IRA directly from the decedent and not from the trust.
2. Is eligible to roll over IRA distribution to one or more IRAs established and maintained in her own name as long as the rollover occurs no later than the 60th day following the day the IRA proceeds are received.
3. Doesn't have to include in gross income, for the year in which the distribution from the IRA is made, any portion of the proceeds distributed from the IRA that are timely rolled over to one or more IRAs set up and maintained in her name.

Rules Remain

Although the IRS ruled in the spouse's favor, she still must follow several tax code rules. Required RMDs can't be rolled over and she must observe the one-rollover-per-year limit. Inherited IRAs come with complex tax rules. If you're in a similar situation, talk to your tax advisor about how best to handle an inherited IRA.

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