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Private Letter Ruling 9422060

March 14, 1994

This is in response to your ***** letter, as supplemented, in which you request a private letter ruling under section 408(d)(1) of the Internal Revenue Code. The following facts and representations have been asserted in support of your request.

Taxpayer A, whose date of birth is *****, is married to Taxpayer B, whose date of birth is *****. Taxpayer A maintains an individual retirement arrangement (IRA) with Company C, and Taxpayer B maintains an IRA with Company D. In 1992, Taxpayer A transferred a portion of his IRA held with Company C to his wife's IRA held with Company D.

Based on the above facts, you request the following letter ruling:

Under the provisions of section 1041 of the Code, the transfer of a portion of Taxpayer A's IRA to Taxpayer B's IRA will not be considered a taxable distribution from Taxpayer A's IRA subject to inclusion in Taxpayer A's gross income, notwithstanding section 408(d)(1) of the Code.

With respect to your request for letter ruling, section 408 of the Code establishes the [*2] general requirements governing IRAs.

Section 408(a) of the Code provides, in pertinent part, that for purposes of section 408, 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 specified under section 408.

Section 408(d) of the Code establishes the general requirements for the tax treatment of distributions from IRAs. Section 408(d)(1) of the Code provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under Code section 72.

Section 408(d)(6) of the Code provides that the transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this [*3] subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

Section 408(d)(6) (formerly (d)(5)) of the Code was added by section 2002(b) of the Employees Retirement Income Security Act of 1974 (ERISA), Pub. Law 93-406 (Sept. 2, 1974). Section 408(d)(6) was last amended by section 491(d)(23) of the Deficit Reduction Act of 1984 (DEFRA), Pub. Law 98-369 (July 18, 1984).

Section 1041(a) of the Code, as added by section 421(a) of DEFRA, and most recently amended by section 1842(b) of the Tax Reform Act of 1986, provides, in pertinent part, that no gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse.

According to your *****, request for letter ruling, Taxpayer A transferred a portion of his Company C IRA account balance to the Taxpayer B's IRA held with Company D. Upon completion of the transfer, such amounts were no longer held by an IRA maintained for the exclusive benefit of Taxpayer A. Thus, the transfer [*4] constituted a distribution from Taxpayer A's IRA.

You want the Internal Revenue Service to rule that under section 1041 of the Code, the amount of the distribution would not be includible in Taxpayer A's gross income pursuant to section 408(d)(1) of the Code. Your argument is that section 1041 applies to the transfer/distribution, and that section 1041 overrides the provisions of section 408(d) of the Code.

Under general principles of statutory construction, a specific provision controls over a general one. The original enactment of section 408(d) of the Code preceded the enactment of section 1041. Furthermore, at the time Congress added section 1041 to the Code, it also amended, but did not repeal, the specific language of section 408(d)(6) limiting nontaxable IRA transfers to situations incident to divorce. Thus, Congress did not intend that section 1041 override section 408(d). Consequently, the provisions of section 1041 do not relate to the determination of taxability of the IRA distribution under section 408(d)(1) of the Code.

Accordingly, we conclude, with respect to your ruling request, that the transfer by the trustee of a portion of Taxpayer A's Company C IRA account balance [*5] to the IRA of Taxpayer B maintained with Company D will be considered a distribution from Taxpayer A's IRA and will be subject to inclusion in Taxpayer A's gross income under section 408(d)(1) of the Code.

A copy of this ruling letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely yours, John G. Riddle, Jr., Acting Chief, Employee Plans, Rulings Branch