

Can A Spouse Rollover an IRA if a Trust is Named as the Beneficiary?

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THE ANSWER



To the Optimist:

- YES

To the Realist:

- IT DEPENDS

There is some confusion that stems from different authorities that seem to offer contradictory answers.

Treasury Regulations



- Issued by the U.S. Internal Revenue Service.
- They are the Treasury Department's official interpretations of the Internal Revenue Code.
- Can be used as an authority by anyone.

Private Letter Rulings



- Issued by the U.S. Internal Revenue Service.
- They are written decisions by the IRS in response to a taxpayer's request for guidance.
- A Private Letter Ruling binds only the IRS and the requesting taxpayer. Thus, a Private Letter Ruling may not be cited or relied upon for precedent.

Treasury Decision 8987



Preamble

- A surviving spouse that receives a distribution from a deceased spouse's IRA, is permitted to roll the distribution into an IRA of his/her own even if the spouse is not the sole beneficiary of the IRA.
- A rollover may be accomplished even if IRA assets pass through a trust.

Regulation

- The surviving spouse may treat his/her interest in a deceased spouse's IRA as the surviving spouse's own IRA if:
 - Spouse is sole beneficiary, and has
 - Unlimited right to withdraw funds.
- If a trust is named as the beneficiary, these requirements are **not** satisfied, even if spouse is the sole beneficiary of the trust.



Private Letter Ruling: 200905040

Decedent, owner of qualified plan, survived by his Wife

Trust named as primary beneficiary of the qualified plan

Wife is sole trustee of the trust with the power to amend/revoke the trust and make discretionary distributions to herself (specifically empowered to payout benefits from retirement plans)

- After Decedent's death, Wife terminated the trust and distributed the qualified plan to an IRA set up in the Wife's name.
- IRS deemed this transaction a rollover and the distribution was not included in Wife's gross income for that year:



**Private Letter
Ruling:
200905040**

- IRC §402(c)(9) - Qualified Plan: if a distribution attributed to an employee is paid to a spouse after participant's death, distribution will be treated as if distributed to the employee
- BUT ... As a general rule- if a Decedent's qualified retirement plan passes through a third party (such as a trust or an estate), a spouse will NOT be treated as having received the distribution from the Decedent, rather the third party. Thus, the distribution is not eligible to be rolled over into an IRA maintained in the name of the spouse.



**Private Letter
Ruling:
200905040**

- **EXCEPTION:**
 - Because Spouse could:
 - ✦ Amend/revoke the trust
 - ✦ Control the disposition of the trusts assets
 - ✦ Make discretionary payments of trust assets (including qualified funds) to herself...

 - Spouse was deemed to be the payee/distributee of Decedent's qualified plan, and eligible to rollover the distribution into an IRA maintained in the Spouse's name.



Private Letter Ruling: 200833028

Decedent, owner of
IRA, survived by his
Wife

Trust named as primary
beneficiary of the IRA

Wife is sole, successor
trustee of the trust with
full control over trust
assets

Wife is the exclusive
residual beneficiary of
the trust (children are
beneficiaries of
personal property and
real estate)

- Wife (as trustee) distributed Decedent's entire IRA to herself and made a rollover contribution to an IRA set up and maintained in her name within 60 days.
- IRS deemed this transaction a rollover and the distribution was not included in Wife's gross income for that year:



**Private Letter
Ruling:
200833028**

- Again- General Rule: Qualified funds received by a spouse through a third party (trust) are not eligible to be rolled over. And...
- IRC §408(d)(1) – any amount paid or distributed out of an individual retirement plan shall be included in the gross income of the payee.



**Private Letter
Ruling:
200833028**

- **EXCEPTION:**
 - Because Spouse Was:
 - ✦ Sole Trustee
 - ✦ Exclusive Residual Beneficiary of the trust
 - ✦ Unrestricted in making distributions of trust assets (including Decedent's IRA)...

 - Spouse was deemed to be the direct beneficiary of Decedent's IRA, and eligible to rollover the distribution into an IRA maintained in the Spouse's name.



**Private Letter
Ruling:
200833028**

- **Specifically addresses Treasury Decision 8987**
- Acknowledges the perceived conflict between the Preamble and the text of the Regulation, and
- Utilizes the language of the Preamble and factors all circumstances to determine if spouse should be considered the sole beneficiary with unrestricted ability to withdraw funds, despite the fact that a trust is technically named as the beneficiary.



**Private Letter
Ruling:
200934046**

Decedent, owner of
IRA, survived by his
Wife and four children

Children named as
primary beneficiaries of
the IRA, but they all
disclaim

IRA now passes via the
terms of decedent's will
(credit shelter trusts)
Wife is sole trustee and
beneficiary of the
Marital trust with full
access to trust assets

- Wife (as trustee) allocated the entire IRA to the Marital trust, of which she is the sole trustee and beneficiary.
- Wife (as trustee) made an in-kind distribution of the IRA to herself (as beneficiary) and then made a rollover contribution to an IRA set up and maintained in her name.
- IRS deemed this transaction a rollover and the distribution was not included in Wife's gross income for that year:



**Private Letter
Ruling:
200934046**

- This transaction also falls within the exception to the rule:
 - Because Spouse Was:
 - ✦ Sole Trustee
 - ✦ Sole Beneficiary
 - ✦ Unrestricted in her power to pay IRA assets to herself
 - Spouse was eligible to rollover the distribution into an IRA maintained in the Spouse's name.



Private Letter Ruling: 20086039

Decedent, owner of qualified plan, survived by his Wife, Trust named as beneficiary of qualified plan

Trust dictates that Wife's ownership interest in qualified plan is paid directly to Wife outright

Wife is sole trustee and beneficiary of the trust with access to trust assets for her health, maintenance and support

- Decedent and Wife live in a *Community Property State* (property acquired during a marriage is jointly owned and divided accordingly upon death)
- Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin



**Private Letter
Ruling:
200826039**

- Wife (as Executrix) transferred via direct rollover 1/2 of the qualified plan (representing her ownership interest) into an IRA set up and maintained in her name.
- This money passed through Decedent's estate, but the IRS deemed it eligible to be rolled over by Wife because the Wife received the money outright with no restriction on its use.



**Private Letter
Ruling:
200826039**

- The remaining 1/2 of the qualified plan is NOT eligible to be rolled over because the trust is named as the beneficiary and the terms of the trust do not fit within the exception allowing spousal rollover.
- Wife is the sole trustee and beneficiary of the trust, BUT her access to the trust assets is limited: Health, Maintenance and Support.



**Private Letter
Ruling:
200826039**

No Spousal Rollover.

- The remaining $\frac{1}{2}$ of the qualified plan was allocated to the trust for the health, maintenance and support of the Wife.

Since the 2002 promulgation of the final Treasury Regulations that have given rise to this confusion, there have been over 75 Private Letter Rulings issued:



“SURVIVING SPOUSES CAN MAKE IRA ROLLOVERS, EVEN THOUGH A TRUST IS NAMED AS THE RETIREMENT PLAN BENEFICIARY, AS LONG AS THE SURVIVING SPOUSE IS THE *REAL* BENEFICIARY.”

Spouse as the *Real* Beneficiary:



**“WHEN THE SPOUSE HOLDS ALL THE
STRINGS NEEDED TO GAIN
UNFETTERED ACCESS TO THE
DECEDENT’S IRA.”**



Preamble to Treasury Decision 8987

“A rollover may be accomplished even if IRA assets pass through a trust.”

- The IRS relies on the Preamble in its PLRs.

AND

- *Armco v. Commissioner*, 87 T.C. 865, (1986).
 - It is entirely appropriate to read regulations in view of related preambles.
 - The same persons who draft the regulations, write the preambles.
 - The preamble is passed with the same review process as the regulation.
 - Preambles express the intended effect of some part of a regulation.

Can a Spouse Rollover an IRA if a Trust is named as the Beneficiary?



- YES, BUT...
- It Depends On The Terms Of The Trust.
- The Trust Must Give The Spouse *Unfettered Access* To The IRA.

The Use of Trusts in Estate Planning



- So...
- Why aren't all trusts drafted in a way that allows for a surviving spouse to rollover a deceased spouse's IRA if they so choose?

The Use of Trusts in Estate Planning



- Trusts are useful to provide beneficiaries access to an inheritance in a protected manner.
- The beneficiary's access to the trust assets is limited so that in the event a creditor is entitled to 'step into the shoes' of the beneficiary, the creditor's access to the trust assets is also limited.
 - Health, Education, Maintenance, and Support
 - Prenuptial Agreement

The Use of Trusts in Estate Planning



- If the trust that is named as the beneficiary of an IRA is a trust that protects an inheritance by restricting a beneficiary's access to trust assets (or if the surviving spouse is not the sole trustee of the trust)...
- This does **not** give the surviving spouse all the strings needed to gain unfettered access to the decedent's IRA, and...
- The surviving spouse **cannot** rollover the decedent's IRA into a qualified account set up and maintained in his/her own name.

What's More Important...



Asset/Creditor Protection

OR Spousal Rollover?

Asset/Creditor Protection.



**NAME THE TRUST BENEFICIARY OF THE IRA, AND
DRAFT THE TRUST WITH THE APPROPRIATE
PROTECTIONS, THUS FETTERING THE SURVIVING
SPOUSES ACCESS TO THE IRA**

Spousal Rollover.



**LEAVE THE SPOUSE NAMED AS THE PRIMARY
BENEFICIARY OF THE IRA**

Can't Decide/Want to Wait to See What Makes the Most Sense at Decedent's Death.



- 1. NAME THE TRUST BENEFICIARY OF THE IRA, AND DRAFT THE TRUST WITH THE APPROPRIATE PROTECTIONS, THUS FETTERING THE SURVIVING SPOUSES ACCESS TO THE IRA**

AND

- 2. NAME THE SPOUSE AS THE CONTINGENT BENEFICIARY OF THE IRA**

THE END.



**THANK YOU FOR YOUR ATTENDANCE,
ATTENTION
AND
PARTICIPATION.**