



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200508029

SE:T:EP:PA.T4

Uniform Issue List: 408.03-00

NOV 30 2004

Legend:

Taxpayer A =
Taxpayer B =
Company C =
Amount D =
Date E =
Date F =
Month G =
Date H =
IRA X =

IRA Y =

Dear

This is in response to your request submitted by your authorized representative dated *****, for a waiver of the 60-day rollover requirement in section 408(d)(3) of the Internal Revenue Code (the Code).

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

Taxpayer B maintained IRA X with Company C. Taxpayer B died unexpectedly on Date E at the age of **. Taxpayer A is the surviving spouse of Taxpayer B and is the beneficiary of IRA X. Following Taxpayer B's untimely death, Taxpayer A had to administer the estate and handle the family finances. Taxpayer B had always handled the couple's finances. Company C provided Taxpayer A with a beneficiary claim statement. The claim statement did not indicate that it was for a distribution from an IRA. Taxpayer A mistakenly assumed that IRA X was simply a life insurance policy and not an IRA. She chose the lump sum payment offered as an option on the beneficiary claim form. On Date F Taxpayer A received Amount D. Taxpayer A promptly deposited Amount D into an estate account she had established at her local bank.

During Month G, Taxpayer A began the preparation of her [REDACTED] tax return and consulted a local tax preparer. At that time Taxpayer A learned that the distribution she had received from Company C was not a life insurance payment but was, in fact, a taxable distribution from an IRA. With the help of her daughter, Taxpayer A withdrew Amount D from the estate account, and deposited Amount D into IRA Y on Date H.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money or any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A demonstrates that because of the unexpected death of her husband and confusing information provided to her by Company C concerning the distribution of Amount D, she did not roll over Amount D into her own IRA within the required 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount D which was deposited into IRA Y on Date H will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

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

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

If you have any questions regarding this ruling, you may contact *****

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

200508029

Enclosures:

Notice of Intention to Disclose
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