



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200937040

JUN 15 2009

U.I.L. 408.03-00

SET:EP:RA:T4

XXXXX  
XXXXX  
XXXXX

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Amount N = xxxxx

Bank B = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = xxxxx

Date 4 = xxxxx

Dear xxxxx:

This is in response to your letter dated March 19, 2009, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, age 84, maintained a traditional individual retirement account, IRA X, with Bank B. Taxpayer A represents that when he received a distribution from IRA X on Date 1, he intended to roll over the entire amount of the distribution

totaling Amount N into another IRA. He asserts that his failure to accomplish a rollover of Amount N within the 60-day period prescribed by section 408(d)(3) of the Code was due to the death of his spouse which impaired his ability to make a rollover timely. Taxpayer A further asserts that Amount N has not been used for any purpose and has remained on deposit in Taxpayer A's checking account at Bank B since Date 1.

Taxpayer A represents that on Date 1, approximately 12 months after Taxpayer A purchased a certificate of deposit (CD) to establish IRA X, Taxpayer A liquidated the CD and withdrew the entire account balance of IRA X which totaled Amount N. In addition, on Date 1, Taxpayer A deposited Amount N into a checking account in his name maintained with Bank B with the intent to rollover Amount N into an IRA within 60 days of Date 1.

Taxpayer A represents that on Date 2, Taxpayer A's spouse died in a medical facility after her condition from a long-term illness worsened. The funeral of Taxpayer A's spouse was held several days later on Date 3 with burial the following day. Taxpayer A further represents that the deterioration of his spouse's medical condition and her death occurred within 60 days of Date 1. In addition, Taxpayer A represents that during the time surrounding his spouse's death through to her burial, Taxpayer A's mind and time were so occupied by immediate events and his responsibility to make funeral arrangements that he was unable to complete the intended rollover.

Taxpayer A represents that following his spouse's burial on Date 4, he travelled to Bank B and attempted to roll over Amount N into another IRA, however, Bank B declined to establish such an IRA because more than 60 days had passed since Date 1, the date Amount N had been distributed from IRA X. Taxpayer A contacted the Internal Revenue Service immediately for assistance and was informed of the process for requesting an extension of the 60-day rollover period.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount N from IRA X.

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) 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 and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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.

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The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount N distributed from IRA X was due to the severe illness and death of his spouse during the 60-day period which impaired his ability to make a timely rollover.

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 N from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount N will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

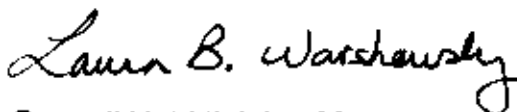
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

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

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

*for*   
Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose