



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Uniform Issue List: 408.00-00

OCT 19 2004

SE: T: EP: RA: T3

Legend:

Taxpayer A =

Company C =

Company D =

IRA X =

IRA Y =

IRA Z =

Amount E =

Amount F =

Amount G =

Amount H =

Amount I =

Dear

This is in response to your request dated June 10, 2004, on behalf of the estate of Taxpayer A, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated September 7, 2004, supplemented the request.

Your representative has submitted the following facts and representations:

On May 2, [REDACTED] Taxpayer A requested that Amount E and Amount F be transferred from two individual retirement accounts, IRAs X and Y respectively, in direct trustee-to-trustee transfers, to an IRA maintained at Company D. On May 6, [REDACTED], Company C, the trustee of IRAs X and Y, made the trustee-to-trustee transfers to Company D which deposited the funds into an IRA account set up in the name of and for the benefit of Taxpayer A (IRA Z).

During the preparation of Taxpayer A's [REDACTED] income tax return, Taxpayer A noticed that, based on the Form 1099-R issued by Company C, the transfers were not reported by Company C as trustee-to-trustee transfers, but rather as a fully taxable distribution of Amount G (Amount E plus Amount F). Amount I was withheld for federal income taxes. The net amount, Amount H, was received by Company D from Company C, and deposited into IRA Z. At no time did Taxpayer A have control of any funds, as the IRA X and IRA Y amounts were either transferred by trustee-to-trustee transfers to IRA Z or sent directly to the Internal Revenue Service as payment of federal income tax.

Prior to her death, Taxpayer A had contacted Company D on more than one occasion in attempts to reverse Company C's error and have Amount I contributed into her IRA Z. However, Taxpayer A, while continuing her attempts to correct the reporting error, passed away on August 31, [REDACTED], prior to a final determination as to the facts surrounding the error in making the trustee-to-trustee transfers.

In October, [REDACTED], you, as personal representative of the estate of Taxpayer A, deposited into IRA Z, Amount I, the amount of the federal income tax withheld when IRA X and IRA Y amounts were placed in IRA Z, in order to complete the transfer of Amount G to said IRA Z.

In a letter dated October 20, [REDACTED] to Taxpayer A, which was after the death of Taxpayer A, Company D indicated that the transaction was processed incorrectly, but that Company C was unable to correct the error because more than one year had passed since the transaction.

Documentation submitted as part of this request confirms the intent of Taxpayer A to complete direct IRA trustee-to-trustee transfers totaling Amount G into IRA Z. Specifically, a form prepared by Company D and signed by Taxpayer A on or about May 2, [REDACTED], indicated that Taxpayer A had established an IRA with Company D and that Company D agreed "...to accept a trustee to trustee "transfer" of funds..." from Taxpayer A.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to your contribution of Amount I into IRA Z because the failure to waive such requirement would be against equity or good conscience.

With respect to your ruling request, 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 and 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 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 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)(l) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(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)(l) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(l), 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 issue presented in this case is whether you, as a personal representative of the estate of Individual A properly rolled over Amount I into IRA Z. With respect to the resolution of said issue, we note that Individual A had established IRA Z prior to her death and had the intent to transfer, by direct trustee-to-trustee transfers, all amounts standing in IRAs X and Y, totaling Amount G, into such IRA. However, because of an error on the part of Company C, the requested transfers were treated as taxable distributions. As a result, Company C withheld Amount I for federal income taxes, and only Amount H was transferred to IRA Z.

The facts indicate that Taxpayer A had the intent to transfer Amounts E and F (totaling Amount G) into IRA Z, an IRA that she established prior to her death. Furthermore,

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Amount H had been placed IRA Z and the difference between Amount G and Amount H (Amount I) would also have been placed in IRA Z but for an error on the part of Company C which was beyond the control of Taxpayer A. Furthermore, Taxpayer A died, in the process of, but prior to, rectifying the error made by Company C with respect to her intended trustee-to-trustee transfers.

Based on the above facts, it is our conclusion that you, as personal representative of the estate of Taxpayer A, properly rolled over Amount I to IRA Z.

Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the contribution of Amount I to IRA Z. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the amount deposited into IRA Z during October, [REDACTED] (totaling Amount I), is considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Please note that IRA Z will be treated as having a "designated beneficiary" within the meaning of, and for purposes of, Code section 401(a)(9) only if Taxpayer A had designated one or more individuals eligible to be treated as such prior to her death. You, as personal representative of Taxpayer A's estate, cannot "designate" a Code section 401(a)(9) beneficiary of IRA Z.

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 letter 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 ***** (ID **-****) at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose