



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200516021

JAN 28 2005

SE: T. LEP: RA: T4

Uniform Issue List: 408.03-00

Legend:

Individual A	=	
Individual B	=	Executrix
Bank B	=	
IRA X	=	
Amount D	=	
Date M	=	
Date N	=	
Date O	=	

200516021

Dear :

This is in response to Individual A's request of June 12, 2003, as supplemented by correspondence dated September 10, 2004 and October 15, 2004, through your authorized representative, for a waiver of the 60-day rollover requirement in section 408(d)(3) of the Internal Revenue Code (Code).

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

Individual A, at age 84, resided in an assisted living residence. On Date M, Individual A was hospitalized after having a fall and a stroke, which resulted in memory loss. Individual A died on Date O at age 86.

On Date N, Individual A withdrew Amount D from IRA X and deposited Amount D in a checking account with Bank B, where it remained at her death. At the time of the withdrawal Individual A stated that having more than one account was confusing and she wanted to simplify her finances. Individual A was incapable of understanding the consequences of the withdrawal and did not consult with her family or her accountant.

As a result of the effects of Individual A's mental incapacity, Individual A did not redeposit Amount D into an IRA within 60 days of Date N. Individual A made no rollovers from an IRA within the one year period prior to or after Date N.

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 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)(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) of the Code where 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.

Rev. Proc. 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; and (4) the time elapsed since the distribution occurred.

Because of the effects of Individual A's mental condition, Amount D was not redeposited within 60 days. Amount D remained in a checking account with Bank B on Individual A's death.

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. Individual B as Executrix of the estate of Individual A, is granted a period of 60 days from the issuance of this ruling letter to complete the rollover of an amount not to exceed Amount D into an IRA in Individual A's name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, this

amount 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, "minimum required distributions", (which are made applicable to IRAs under section 408(a)(6)).

The Service notes that the IRA into which Amount D will be rolled over will not have a designated beneficiary as that term is defined in section 401(a)(9) of the Code. Thus, the section 401(a)(9) distribution period with respect to the rollover IRA referred to above is that applicable to an individual who died after to having attained her required beginning date without having designated a beneficiary thereof.

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 by others as precedent.

If you have any questions about this ruling, please contact.....

Sincerely yours,



Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 4