



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

201044036

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

AUG 11 2010

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SE:T:EP:RA:T2

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Taxpayer B = XXXXXXXXXXXXXXXXXXXX

Amount C = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to your request dated December 18, 2009, submitted on behalf of the estate of Taxpayer A, by your authorized representative, in which you, as the personal representative of the estate of Taxpayer A, 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 penalty of perjury in support of the ruling requested:

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Taxpayer A, age 50, was the owner of IRA X, a Savings Incentive Match Plan for Employees (SIMPLE ) IRA. Taxpayer A received a distribution totaling Amount C from IRA X. Taxpayer A died on Date 2. Taxpayer B asserts that the failure to accomplish a rollover of Amount C within the 60-day period prescribed by section 408(d)(3) of the Code was due to Taxpayer A's death.

Taxpayer B represents that pursuant to the termination of IRA X on Date 1, Taxpayer A received three checks from IRA X totaling Amount C. Taxpayer A intended to roll over Amount C into a new traditional IRA account with a different custodian; but died on Date 2, before he was able to complete the rollover. On Date 3, Taxpayer B discovered the uncashed checks on Taxpayer A's desk and attempted to establish an IRA prior to Date 4, the expiration of the 60-day rollover period; but no financial institution would accept them.

Taxpayer B has submitted a certified copy of the will naming Taxpayer B as personal representative of Taxpayer A's estate. Because Taxpayer A was unable to complete the rollover due to his death, Taxpayer B, as surviving spouse and sole beneficiary, has requested a waiver of the 60-day rollover requirement to rollover the proceeds from IRA X into an IRA account set up and maintained in her name as spousal beneficiary.

Documentation has been submitted that reveals that Taxpayer A intended to roll over Amount C within 60 days of Date 1, the date of distribution. Amount C has not been used for any other purpose.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount C 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) 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

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(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)(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)(C)(i) of the Code provides, in summary, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, in short, under circumstances that conform with the requirements of Code section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

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 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 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, 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 Preamble to the "Final" Income Tax Regulations under section 401(a)(9) of the Code provides, in relevant part, that a surviving spouse may elect to treat an IRA of

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his/her deceased spouse as his/her own if the surviving spouse is the sole beneficiary of the IRA with an unlimited right to withdraw from the IRA. A surviving spouse may not elect to treat an IRA as his/her own if a trust is the beneficiary of the IRA. However, a surviving spouse maybe eligible to roll over a distribution from an IRA of a decedent if the spouse actually receives the distribution regardless of whether the spouse is the sole beneficiary of the IRA (See Preamble at 67 Federal Register 18992-18993 (April 17, 2002)).

The information presented and the documentation you submitted is consistent with your assertion that the failure to accomplish a timely rollover was due to the death of Taxpayer A.

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 C from IRA X. Taxpayer B is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C 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 C will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

The Service notes that the rollover IRA into which Amount C will be contributed, will not have a "designated beneficiary" as that term is defined in Code section 401(a)(9). Thus, the Code section 401(a)(9) distribution period with respect to the rollover IRA will be that applicable to an IRA owner who had reached his required beginning date and died without designating a beneficiary of his IRA.

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.

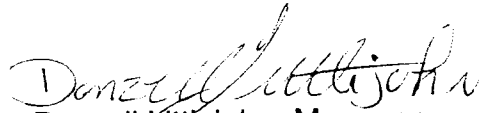
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX (ID XX-XXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose