



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

201044038

AUG 10 2010

U.I.L. 408.03-00

XXXXX  
XXXXX  
XXXXX

SE:T:EP:RA:T4

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Account Y = xxxxx

Financial Institution C = xxxxx

Financial Institution D = xxxxx

Country D = xxxxx

Amount N = xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

201044038

Dear xxxxx:

This is in response to a letter dated December 28, 2009, as supplemented by correspondence dated February 16 and June 16, 2010, submitted on your behalf by your authorized representative, requesting a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 68, represents that on Date 1 she received a distribution of Amount N from IRA X, an Individual Retirement Arrangement she maintained with Financial Institution C. Taxpayer A asserts that her failure to accomplish a rollover of Amount N into an IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to a sudden and serious medical illness which impaired temporarily her ability to manage her financial affairs. Taxpayer A further asserts that Amount N has not been used for any other purpose.

Taxpayer A resides in Country D. In Year 1, while visiting the United States, she instructed Financial Institution C to wire Amount N of IRA X to Account Y, a non-IRA account she maintained at Financial Institution D in Country D.

It is represented that when Amount N was distributed from IRA X, it was Taxpayer A's intention to roll over Amount N into an IRA to be established in Country D.

It is represented that Taxpayer A, during the 60-day rollover period following Date 1, contracted a severe case of pneumonia, and that the course of the illness and her recuperation from it delayed her return to Country D until after the 60-day period following Date 1 had expired. Upon her return to Country D, she sought assistance promptly to address the expiration of the 60-day rollover period.

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement 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) of the Code.

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(d)(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.

Under the general rules of Revenue Procedure 2003-16, if all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to a contribution and, the 60-day requirement is waived pursuant to the Revenue Procedure, an amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Section 408(a) of the Code and the regulations thereunder provide, in pertinent part, that the term "individual retirement account" means a trust created or organized in the United States and that the trustee must be a bank (or a person which meets certain requirements for approval by the Service as a non-bank trustee).

Taxpayer A has not demonstrated that the transaction intended by her to establish an account in Country D for the purpose of maintaining the tax-deferred status under section 408 of the Code of Amount N, if implemented within the 60-day period, would have constituted an individual retirement account within the meaning of section 408(a) of the Code.

Thus, the information presented and documentation submitted is not consistent with Taxpayer A's assertion that, but for the expiration of the 60-day rollover period, she would have accomplished the rollover of Amount N from IRA X into another IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount N from IRA X.

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 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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 4

Enclosures:

Copy of deleted ruling letter  
Notice of Intention to Disclose

cc:

xxxxxx

xxxxxx

xxxxxx