



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201114039

JAN 10 2011

U.I.L. 408.03-00

T:EP:RA:T3

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX  
IRA X = XXXXXXXXXXXXXXXXXXXXXXXX  
Amount D = XXXXXXXXXXXXXXXXXXXXXXXX  
Bank B = XXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is in response to your letter dated xxxxxxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxxxxxx, submitted by you, 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 81, represents that she received a distribution from IRA X totaling Amount D, intending to roll it over to another Individual Retirement Account as she was losing money at Bank B. Taxpayer A asserts that her failure to accomplish a rollover of Amount D from IRA X within the 60-day period prescribed by section 408(d)(3) of the Code was due to her own serious medical condition, hospitalization, inability to drive and total dependence on her daughter and son in law during the 60-day rollover period, which together impaired her ability to accomplish a timely rollover.

Taxpayer A asserts that during and after the 60-day period, she spent seven months under the care of various physicians and was not living at her primary

residence. Taxpayer A states that she was unable to drive and was living with her daughter and son in law who took care of her financial matters during her illness. Taxpayer A further states that her daughter took care of her mail and deposited all the checks that came to her house. Taxpayer A represents that on xxxxxxxxxxxx, her daughter deposited Amount D into Taxpayer A's personal account without knowledge that Amount D was to be rolled over into another IRA.

Taxpayer A asserts that her medical condition including replacement of knee surgery, catheterization, insertion of a stint, and hospitalization exacerbated the situation and prevented her from rolling over Amount D into another IRA within the 60-day rollover period prescribed by section 403(d)(3) the Code.

Taxpayer A further asserts that Amount D has not been used for any other purpose.

Based upon the facts and representations, Taxpayer A requests ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement with respect to Amount D.

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 received 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 in 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 included in gross income because of the application of section 408(d)(3).

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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by her medical condition and hospitalization during the 60-day rollover period.


Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D 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 D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions 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 that 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 regarding this letter, please contact xxxxxxxxxxxxxx,  
SE:T:EP:RA:T:3 at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice 437