



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201146024

Uniform Issue List: 408.03-00

AUG 24 2011

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SE:T:EP:RA:T2

Legend:

Taxpayer A ###

Individual B ###

IRA X ###

Amount 1 ###

Date 1 ###

Dear ###:

This letter is in response to your ruling request dated November 4, 2010, submitted by your authorized representative, as supplemented by correspondence dated December 20, 2010 and January 5, 2011, 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 penalty of perjury in support of the ruling requested:

Taxpayer A, years old, received a distribution of Amount 1 from IRA X on Date 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code of Amount 1 from IRA X was due to a bad real estate market and the neglect of her principal residence due to her dementia.

Taxpayer A's daughter, Individual B, represents that she has power of attorney for Taxpayer A and had it during all relevant times for this ruling. Taxpayer A suffers from dementia and is unable to manage her own financial affairs. Individual B, acting on Taxpayer A's behalf, withdrew Amount 1 from IRA X on Date 1. She intended to use Amount 1 to pay for an assisted living facility for Taxpayer A. Individual B asserts that

she intended to later use the proceeds from the sale of the principal residence of Taxpayer A to replace Amount 1 and to rollover the proceeds into another IRA within the 60-day rollover period prescribed by section 408(d)(3) of the Code. Individual B asserts the failure to accomplish the rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to unforeseen difficulties in selling Taxpayer A's principal residence, specifically a bad real estate market and the poor condition of the principal residence caused by Taxpayer A's neglect due to her dementia.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

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)(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.

Section 408(d)(3)(E) provides that the rollover provisions of section 408 (d) do not apply to any amount required to be distributed under section 408 (a) (6).

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)(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.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Rev. Proc. 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. Although Taxpayer A may not have been fit to manage her own financial affairs, Individual B has had power of attorney over the affairs of Taxpayer A during all relevant times for this ruling. Individual B has not alleged that any of the factors enumerated in Rev. Proc. 2003-16 prevented her from timely completing the rollover. Further, in using Amount 1 to purchase an assisted living facility with intention of using the proceeds from the sale of Taxpayer A's principal residence to replace Amount 1, Individual B assumed the risk that Amount 1 might not be recouped from the sale of the principal residence prior to the expiration of the 60-day rollover period.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X, and thus Amount 1 will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

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.

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

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If you wish to inquire about this ruling, please contact ### at ###-###-#### or by fax at (###) ###-####. 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

cc:

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