

201149048



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SEP 13 2011

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XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

T:EP:RA:T3

Legend:

Individual A = XXXXXXXXXXXXXXXXXXXX

Taxpayer B = XXXXXXXXXXXXXXXXXXXX

IRA X= XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

IRA Y= XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Account Y = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Financial Institution D = XXXXXXXXXXXXXXXXXXXX

Financial Advisor L = XXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXX

Amount E = XXXXXXXXXXXXXXXXXXXX

Amount F = XXXXXXXXXXXXXXXXXXXX

Bank Z = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXX
Date 4 = XXXXXXXXXXXXXXXX
Date 5 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

This is in response to your letter dated April 3, 2010, and supplemented by letters dated June 5, 2011, and July 25, 2011, as submitted by your authorized representative, in which you request 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 have been submitted under penalty of perjury in support of the ruling requested.

Individual A represents that her deceased husband (Taxpayer B), received a distribution from IRA X totaling Amount D. Individual A asserts that Taxpayer B's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the mental and medical conditions of Taxpayer B, which affected his ability to handle his financial affairs.

Documentation shows that during the period preceding the distribution and through the end of the 60-day rollover period Taxpayer B suffered from a mental condition and a variety of medical conditions which caused his death on Date 5 at the age of 84.

Individual A was Taxpayer B's non-institutional caregiver and was under considerable duress as a result of her husband's deteriorating health. Individual A also suffers from a variety of medical conditions. Although Individual A was inexperienced in handling financial matters, in addition to providing care for Taxpayer B, she attempted to handle their financial affairs which were previously handled by Taxpayer B.

Individual A represents that on Date 1, upon the advice of Financial Advisor L, Taxpayer B closed IRA X maintained by Financial Institution D and a check was issued in Amount D. On Date 2, Individual A deposited Amount E (the required minimum distribution) into Taxpayer B and Individual A's joint checking account with Bank Z. The balance, Amount F, was deposited into Account Y, a non-IRA account at Bank Z.

Individual A represents that Taxpayer B intended to rollover the funds in IRA X to a rollover IRA at Bank Z and that she followed Financial Advisor L's advice as best she could under the circumstances. Individual A asserts that, as a result of Taxpayer B's mental and medical conditions and Individual A being inexperienced in handling their

financial affairs, Amount D was deposited into Account Y instead of a rollover IRA. Individual A did not become aware that a timely rollover had not been made until Date 3, while consulting with her tax preparer. On Date 4, Amount F was withdrawn from Account Y and deposited into IRA Y.

Based on the facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount F.

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 account 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 he 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 one-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)(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)(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 information and documentation submitted is consistent with the assertion that the failure to accomplish a timely rollover within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to Taxpayer B's mental and medical conditions during the 60-day rollover period which affected his ability to handle his financial affairs.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount F (Amount D minus Amount E) from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to the contribution of Amount F to IRA Y will be considered a valid 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.

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 solely 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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

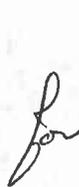
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If you wish to inquire about this ruling, please contact XXXXXXXXXX, SE:T:EP:RA:T3,
I.D. No. XXXXXXXX, at (XX) XXXXXXXXXX.

Sincerely yours,



Laura B. Warshawsky

Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose