



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEC 15 2011

201210046

Uniform Issue List: 408.03-00

T:EP:RA:T3

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXXX
Taxpayer B	= XXXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX
IRA Y	= XXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXXXXXXX
Financial Institution C	= XXXXXXXXXXXXXXXXXXXXX
Financial Institution T	= XXXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXXX
Year M	= XXXXXXXXXXXXXXXXXXXXX
Year N	= XXXXXXXXXXXXXXXXXXXXX

201210046

Dear XXXXXXXX:

This is in response to your letter dated February 15, 2011, as supplemented by correspondence dated December 1, 2011, and December 6, 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, age , represents that he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the medical condition of Taxpayer B, his spouse, and his duties as her caregiver which impaired his ability to accomplish a timely rollover. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A represents that on Date 1, he transferred Amount D from IRA X to a non-IRA account. Taxpayer A represents further that when IRA X, which was maintained at Financial Institution T, matured he decided to change investment vehicles to obtain a higher rate of return; and that it was his intention to rollover Amount D to another rollover IRA. Taxpayer A asserts further that prior to and during the rollover period, Taxpayer B, his wife, experienced numerous medical problems, requiring hospitalization and his full-time service as primary caregiver. Taxpayer B was diagnosed with an aggressive disease and underwent several operations and therapy during Year M and Year N. Taxpayer B's mental and physical condition deteriorated significantly in Year N requiring around the clock care by Taxpayer A until her demise on Date 3. Taxpayer A asserts that his primary caregiver duties increased during the 60-day rollover period resulting in his inability to properly attend to his financial affairs. On Date 2, approximately 11 days after the 60-day period expired, Taxpayer A transferred Amount D to IRA Y, a qualified IRA account.

Documentation provided indicates that, at the time of the distribution, Taxpayer A's mental and emotional condition was seriously affected by his spouse's terminal condition and having to provide around the clock care for her. The documentation submitted shows that Taxpayer B had been treated for physical and mental health conditions since Year M and that these health conditions increased in severity just before and during the 60-day period following Date 1. Documentation also shows that the effects of Taxpayer B's long standing physical and mental health conditions restricted Taxpayer A's ability to handle his financial affairs.

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

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.

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 information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to the medical condition of Taxpayer B, his spouse, and his duties as her caregiver which impaired his ability to accomplish a timely rollover.

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 D 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 such contribution, the Service will treat Taxpayer A's Date 2 contribution of Amount D to IRA Y as a 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 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.

If you wish to inquire about this ruling, please contact XXXXXXXXXX (ID XX-XXXXX) at (XXX)-XXXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

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

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose