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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 23 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

Decedent B =

IRA C =

Financial Institution D =

Financial Institution E =

Court F =

State G =

Amount 1 =

Dear :

This letter is in response to a request for a letter ruling dated June 20, 2011, as supplemented by correspondence dated February 16 and April 12, 2012, 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:

Taxpayer A represents that Decedent B received a distribution from IRA C totaling Amount 1. Taxpayer A asserts that Decedent B's failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to his death.

Decedent B maintained IRA C, an individual retirement account under section 408(a) of the Code, with Financial Institution D. On November 22, 2010, Decedent B requested a distribution of Amount 1 from IRA C, representing the entire balance of IRA C, with the intent of rolling it over to an IRA with another financial institution. Decedent B's goal was to transfer his retirement and non-retirement savings to a single financial institution in order to ease his financial management. Decedent B was over the age of 70 ½ and already receiving required minimum distributions from IRA C.

On November 24, 2010, Decedent B deposited Amount 1 into a bank savings account with Financial Institution E. Even though Decedent B intended to complete the rollover of Amount 1 during the 60-day rollover period under section 408(d)(3) of the Code, before he could do so, he suffered a stroke on December 31, 2010 and died that day.

Taxpayer A is the surviving spouse of Decedent B and primary beneficiary of all of his financial accounts including IRA C. Soon after Decedent B passed away, Taxpayer A went to Financial Institution E and asked if Amount 1 could be transferred to an IRA in her own name. She was told that since Decedent B's financial assets had not yet been conveyed to her as beneficiary, Amount 1 could not be transferred to another IRA. Amount 1 remains in an account with Financial Institution E and has not been used for any other purpose.

Decedent B, in his Last Will and Testament, named Taxpayer A as the personal representative of his estate. The Will states that "my Personal Representative shall have the power to deal with any property, real or personal, held in my estate as fully as I might in the handling of my affairs." By order dated February 10, 2011, Court F, within State G, authorized Taxpayer A to administer the estate of Decedent B. The order provided that Taxpayer A "is fully authorized by the laws of State G to receive, administer and dispose of all the assets belonging to the estate, including but not limited to wages and salary of the decedent, accounts and deposits in financial institutions, ownership rights in stocks and securities..." This court order of administration is provided for by a special provision under State G law for instances when the surviving spouse is the sole heir of a decedent.

Based on the above facts and representations, you request 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 and permit Taxpayer A, as personal representative of Decedent B's estate, to deposit Amount 1 into a rollover IRA.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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) of the Code).

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 sections 408(d)(3)(I) and 402(c)(3)(B) 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.

Under Rev. Proc. 2003-16, the death of a person who receives an eligible rollover distribution is one of the facts and circumstances that the Service will consider when deciding whether to grant a waiver of the 60-day rollover requirement. The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that Decedent B's failure to accomplish a timely rollover of Amount 1 was due to his death.

The personal representative's ability to complete the rollover on behalf of Decedent B is not a question of federal tax law, and the Service lacks the authority to determine the powers of the personal representative.

Assuming that Taxpayer A, as personal representative of Decedent B's estate, is authorized under the laws of State G to complete a rollover of the distribution of Amount 1, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute an amount not more than Amount 1 into a rollover IRA or IRA annuity in the name of Decedent B. 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 contribution will be considered 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 408(a)(6) of the Code.

We note that the rollover IRA, which may be established and into which an amount distributed from IRA C (not to exceed Amount 1) may be rolled over, will not have a "designated beneficiary" as that term is defined in section 401(a)(9) of the Code. The section 401(a)(9) distribution period with respect to the rollover IRA will be that applicable to an IRA owner who dies after attaining his required beginning date without having a designated beneficiary. Accordingly, the entirety of Decedent B's interest in IRA C that is rolled over into a rollover IRA must be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of death of Decedent B.

Finally, the scope of Taxpayer A's authority under the executed power of attorney while Decedent B was alive and as executor of Decedent B's estate after Decedent B's death are matters governed by state law. This ruling assumes Taxpayer A's actions as executor of Decedent B's estate relevant to the ruling request contained herein are in accordance with the laws of State G.

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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact
(I.D. #), , at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: