



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201314055

JAN 09 2013

U.I.L. 408.03-00

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SE: T: EP: RA: T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX
Individual B = XXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXX
IRA Y = XXXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXXX
Bank B = XXXXXXXXXXXXXXXXXXXXX
Company C = XXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your request dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx, submitted on your behalf 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 (the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution on December , 20 , from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her mental condition following the death of Individual B which impaired her ability to handle her financial affairs. Taxpayer A represents that Amount D has not been used for any other purpose.

Individual B, the spouse of Taxpayer A, died on November , 20 . Following Individual B's death, on December , 20 , Taxpayer A received a distribution of Amount D as proceeds from her deceased husband's IRA X and on the same day deposited the funds received into her money market account with Bank B. Taxpayer A suffered from anxiety and stress related to the death of Individual B. It was not until after the expiration of the 60-day rollover period that Taxpayer A realized that Amount A should have been rolled over into a rollover IRA. Medical documentation submitted verifies Taxpayer A's mental condition during the 60-day rollover period.

After the expiration of the 60-day rollover period, on March , 20 , a check for Amount D, payable to Company C was received by Taxpayer A's financial advisor to establish a rollover IRA. On that same date Amount D was deposited into IRA Y.

Based upon 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 60th 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 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 included 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 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 due to her mental condition which impaired her ability to handle her financial affairs during the 60-day rollover period.

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. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, were met with respect to the contribution of Amount D to IRA Y on March 10, 2010, such 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 401(a)(9) 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.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

A user fee of \$625.00 was paid with your ruling request. Pursuant to section 6.04(a) of Rev. Proc. 2013-8, 2013-1, I.R.B. 237 the correct user fee for your request is \$500.00. Accordingly, a check for \$125.00 will be issued under separate cover to the payee of the user fee.

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 concerning this ruling, please contact xxxxxxxx, xxxxxx at xxxxxxxxxxxx. 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 letter ruling
Notice 437

cc: xxxxxxxxxxxxxxxxxxxx