



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

201317021

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 30 2013

Uniform Issue List: 408.03-00

T:EP:NA:T3

Legend:

Taxpayer A:

IRA X:

IRA Y:

Insurance Company P:

Amount H:

Amount K:

Amount L:

Amount M:

Dear :

This is in response to your request dated March 15, 2012, and supplemented by correspondence dated, March 19, 2012, July 16, 2012, and August 17, 2012, submitted on your behalf by your authorized representative, in which you request a ruling to waive 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 owned the Individual Retirement Annuity (IRA), IRA X maintained by Insurance Company P. Taxpayer A represents that on September , 20 , she received a distribution from IRA X of Amount H and on September , 20 , she

received a distribution of Amount K. Taxpayer A asserts that her failure to accomplish a rollover of Amount M, a portion of Amount H, within the 60-day period prescribed by section 408(d)(3) of the Code was due to Taxpayer A's involvement with the medical condition of her husband.

Prior to taking the distribution from IRA X Taxpayer A reacted to the events of her husband's diagnosis, treatment regimen, and expense of a life-threatening illness. Taxpayer A was in fear for her husband's survival. Taxpayer A thought she had to withdraw funds to pay for medical treatments and insurance premiums and requested distributions from IRA X to cover medical expenses because her medical insurance had reached its limits. In addition, Taxpayer A and her husband were in the process of selling their home and moving to a warmer climate. Taxpayer A represents that she became mentally un-focused to the point she made a rash decision to withdraw monies from her IRA.

Taxpayer A represents that she questioned her financial advisor about her IRA withdrawal shortly before the expiration of the 60-day period and learned about the tax consequences of the distribution.

Taxpayer A, further represents that she took steps to create a rollover IRA. Taxpayer A has provided a Form 5498, IRA Contribution Information, showing a contribution of Amount M into IRA Y in 20 . Taxpayer A has also submitted account statements for IRA X showing that Amount M was redeposited into IRA X in December 20 .

Taxpayer A has submitted documentation evidencing her husband's illness during the 60-day period.

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

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)(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) 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 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. Taxpayer

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A has acknowledged that she took the distribution in order to pay medical expenses and insurance premiums and not with an intention of rolling the money over into another IRA. In addition, Taxpayer A has not provided sufficient evidence as to where and when amounts were rolled over and that any of the factors enumerated in Rev. Proc. 2003-16 prevented her from timely completing the rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount M from IRA X.

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.

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

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 have any questions, please contact

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

cc: