



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

201324024

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 18 2013

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

- Decedent A =
- IRA X =
- IRA Y =
- IRA Z =
- Amount A =
- Amount B =
- Amount C =
- Amount D =
- State C =

Dear

This letter is in response to your request dated February 5, 2013, 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 (Code) with respect to Decedent A. You are the executor of the estate of Decedent A.

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

You represent that prior to her death, Decedent A received a distribution of Amount A and Amount B from IRA X and IRA Y, respectively, and on the same day, executed a timely rollover of Amount C to IRA Z. The result is that Amount D, which is the sum of Amount A and Amount B less Amount C, was not timely rolled over. You represent that at the time of the distribution Decedent A suffered from a medical condition which impaired her ability to make reasonably calculated decisions related to her medical care and finances. You assert that the failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 408(d) was due to this medical condition.

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 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), the Internal Revenue Service (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 you is consistent with your assertion that Decedent A's failure to accomplish a timely rollover was caused by her medical condition.

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. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. 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 of Amount D into an IRA will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

However, it is noted that, to the extent that you, as the executor, name a beneficiary of the IRA, section 1.401(a)(9)-4, Q&A-4, of the Regulations provides that a designated beneficiary must be a beneficiary as of the date of death. The Service will not treat any beneficiary named by you, as executor, as a designated beneficiary under section 401(a)(9). Thus, for purposes of section 401(a)(9), the rollover IRA will have no designated beneficiary.

Finally, the scope of the executor's powers is a matter of state law. This ruling assumes that your actions in contributing Amount D into an IRA, set up in Decedent A's name, are in accordance with the laws of State C and pursuant to your authority as the executor of the estate.

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 is being 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 _____ at _____. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,



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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: