



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

201330046

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 01 2013

Uniform Issue List: 408.03-00

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T:EP:RA:T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Decedent B = XXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXX

Company C = XXXXXXXXXXXXXXXXXXXX

Amount A = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxx:

This is in response to your request, dated July 26, 2012, 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 from Decedent B's IRA X totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's mental state and medical condition following the death of her husband, Decedent B, which impaired her ability to make financial decisions during the 60-day rollover period.

Decedent B owned IRA X and a life insurance policy with Company C. Taxpayer A was the sole beneficiary of IRA X.

Decedent B had been ill for ten years before his death. Decedent B had been increasingly dependent upon Taxpayer A over that ten-year period, including periods of recovery from approximately ten major surgical procedures. Taxpayer A was overwhelmed by the heavy burden of her duties as caregiver and, finally, further overwhelmed by grief during the time following Decedent B's eventual death on Date 1.

Taxpayer A was in no mental state after Decedent B's death to make financial decisions. In addition, during such time, Taxpayer A had a disabling disease, which had caused visual impairment progressing toward blindness. A letter from Taxpayer A's physician states that Taxpayer A suffered from long-standing depression, anxiety and memory impairment, and that she experienced a cognitive "perfect storm" at the death of her husband, such that in the months preceding her husband's death, and subsequently, she did not have medical or financial decision making capability.

Following Decedent B's death, Taxpayer A found what she believed to be two life insurance policies on Decedent B. On Date 2, Taxpayer A completed the required forms to claim what she believed were death benefits. At that time, Taxpayer A was not aware that IRA X was not a life insurance policy. Taxpayer A received the distribution of Amount A on Date 3. It was not until April of 20 , when Taxpayer A was having her tax returns prepared that she became aware that Amount A was a taxable distribution from IRA X. On Date 4, which was almost a year after the date on which Taxpayer A received the distribution from IRA X, Amount A was deposited into IRA Y.

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 A.

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 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 her assertion that her failure to accomplish a timely rollover was due to her mental state and medical condition following the death of Decedent B, which impaired her ability to make financial decisions 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 A from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met, the contribution of Amount A into IRA Y on Date 4 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 transaction described herein under the provisions of any other section of either the Code or regulations that 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.

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

If you wish to inquire about this ruling, please contact xxxxxxxxxx (ID xxxxxxxx) at (xxx) xxx-xxxx. 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: xxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx