



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201334046

MAY 31 2013

Uniform Issue List: 408.03-00

T: EP: RA: T3

Legend:

Decedent D:

Surviving Spouse J:

SEP X:

Financial Institution M:

Date 1:

Date 2:

Trust Y:

State M:

Amount M:

Dear

This is in response to your letter dated October 11, 2012, as supplemented by correspondence dated February 6, 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 (the "Code").

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

Decedent D maintained a Simplified Employee Pension, SEP X with Financial Institution

M. Surviving Spouse J, asserts that, on Date 1, Decedent D received a distribution of Amount M from SEP X. Surviving Spouse J asserts that Decedent D's failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the death of Decedent D during the 60-day period and Surviving Spouse J's inability to become properly qualified as Personal Representative of Decedent D's estate, pursuant to the terms of Trust Y, prior to the expiration of the 60-day period.

Decedent D withdrew Amount M from SEP X on Date 1. Decedent D's intent was to rollover Amount M into a rollover IRA within the 60-day rollover period. Decedent D's health declined quickly following the distribution, leading to his death on Date 2, during the 60-day period.

Decedent D was the grantor of Trust Y, a State M trust agreement. Trust Y is the beneficiary of SEP X. Decedent D along with his spouse, Surviving Spouse J, were co-trustees of Trust Y. Upon Decedent D's death, Surviving Spouse J became the sole trustee. As the fiduciary of the deceased taxpayer's estate, Surviving Spouse J intended to rollover Amount M, but it was impossible for Surviving Spouse J to become properly qualified as Personal Representative of the decedent's estate, pursuant to the terms of Trust Y, prior to the expiration of the 60-day rollover period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (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), 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 Surviving Spouse J is consistent with her assertion that the failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the death of Decedent D during the 60-day period and Surviving Spouse J's inability to become properly qualified as Personal Representative of Decedent D's estate, pursuant to the terms of Trust Y, prior to the expiration of the 60-day 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 to Decedent D of Amount M, and Surviving Spouse J is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to an IRA (or IRAs) set up in the name of Decedent D (deceased). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within

the meaning of section 408(d)(3) of the Code.

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

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

This ruling letter is based on the assumption that SEP X meets the requirements of Code section 408(a) of the Code at all times relevant thereto and that Trust Y is valid under the laws of State M.

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

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.

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.

If you wish to inquire about this ruling, 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: