



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

201440024

JUL 09 2014

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Legend:

- Decedent A = XXXXXXXXXXXXXXXXXXXX
- Taxpayer W = XXXXXXXXXXXXXXXXXXXX
- IRA B = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX
- Account C = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX
- Bank D = XXXXXXXXXXXXXXXXXXXX
- Bank E = XXXXXXXXXXXXXXXXXXXX
- Individual F = XXXXXXXXXXXXXXXXXXXX
- State G = XXXXXXXXXXXXXXXXXXXX
- Amount 1 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to a request dated January 14, 2013, as supplemented by correspondence dated May 6, 7, 15, and June 9, 2014, submitted 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 A was the owner of IRA B, maintained by Bank D. Decedent A received a distribution totaling Amount 1 from IRA B. You assert that the failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to Decedent A's worsening medical condition that impaired his ability to manage his financial affairs. You represent that Amount 1 has not been used for any other purpose.

Decedent A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Bank D. In 2009, Decedent A's mental capacity began failing and was later diagnosed with vascular dementia. Decedent A began arguing and harassing the employees of Bank D over the status of his accounts. In June 2010, Decedent A was informed by the attorneys of Bank D that his accounts would be closed in 30 days and all funds distributed. As a result of his mental capacity, Decedent A ignored this notice and on July 13, 2010, checks totaling Amount 1 were distributed and mailed to Decedent A. In August 2010, these checks were discovered by Taxpayer W, Decedent A's spouse who was not aware that the checks were IRA proceeds, and along with other checks found, deposited into a non-IRA account with Bank E. As the results of these and other transactions, on October 6, 2010, Individual F was named Conservator of Decedent A's affairs. Decedent A died on June 21, 2012. The nature of the distributions was discovered in November 2012, when Taxpayer W received a deficiency notice from the Internal Revenue Service (Service).

Documentation from his physician has been submitted that reveals that Decedent A was suffering from a medical condition at the time of these transactions and was not capable of making sound financial decisions or understanding the consequences of his actions.

Based on the facts and representations, you request a ruling that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B.

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 60<sup>th</sup> 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 60<sup>th</sup> 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.

Revenue Procedure 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 information presented and the documentation submitted is consistent with your assertion that Decedent A's failure to accomplish a timely rollover of Amount 1 was caused by Decedent A's medical condition and deteriorating health which impaired his ability to manage his financial affairs, which resulted in Amount 1 being deposited into a non-IRA account.

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 1 from IRA B. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 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, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

However, it is noted that, to the extent that you, as executor and sole beneficiary of Decedent A's estate, name a beneficiary of the IRA, section 1.401(a)(9)-4, of the Income Tax 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 personal representative of Decedent A's estate, as a designated beneficiary under section 401(a)(9) of the Code. 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.

Finally, the scope of the executor's powers is a matter of state law. This ruling assumes that your actions in contributing Amount 1 into an IRA set up in Decedent A's name, are in accordance with the laws of State G and pursuant to your authority as 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 XXXXXXXXXXXXX (Identification No. XXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose