



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

201440030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 07 2014

SE:T:EP:RA:T3

U.I.L. 408.03-00

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Legend:

- Decedent A = XXXXXXXXXXXXXXXXX
- Estate S = XXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXXXX
- Financial Institution B = XXXXXXXXXXXXXXXXX
- Bank C = XXXXXXXXXXXXXXXXX
- Executor E = XXXXXXXXXXXXXXXXX

Dear xxxxxxx:

This letter is in response to your request dated July 31, 2013, as supplemented by correspondence dated September 30, 2013, and May 9, 2014, 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.

Executor E of Estate S represents that prior to his death Decedent A received a distribution from IRA X totaling Amount D. Executor E asserts that Decedent A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to Decedent A's death.

Decedent A maintained IRA X with Financial Institution B. While still alive, on xxxxxxxx Decedent A was arrested and charged with several felony counts. On xxxxxxxxxx, Decedent A withdrew Amount D from IRA X to post his bail and paid Amount D to a bail bondsman on xxxxxxxxxxxxxx. Shortly thereafter, on xxxxxxxxxx, Decedent A committed suicide.

Executor E secured Amount D from the bail bondsman on June 19, 2012, and Amount D is currently held in a blocked account at Bank C in the name of Estate S.

Based upon 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 received 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 included 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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 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 in this case do not substantiate the intent of Decedent A to rollover Amount D. In addition, at the time of his death, within the 60-day rollover period, Decedent A did not have alternative assets to redeposit Amount D which was paid to a bail bondsman. Further, at the time of Decedent A's death, the criminal case against Decedent A had not been resolved so that Amount D would not necessarily have been returned and redeposited into IRA X within the 60-day rollover period.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxx, at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. Any correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

Cc:

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