



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201533026

MAY 20 2015

U.I.L. 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXX

Individual M = XXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXX

Financial Institution B = XXXXXXXXXXXXXXX

Company C = XXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

This is in response to your letter dated August 18, 2014, as supplemented by correspondence dated December 9, 2014, and February 19, 2015, 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 your request.

Taxpayer A represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error committed by Company C.

Taxpayer A represents that she received a distribution of Amount D on October 7, 2013, as a result of the death of her husband, Individual M, who had IRA X with Company C. Taxpayer A completed necessary paperwork to make a trustee-to-trustee transfer of funds in IRA X to be established in Taxpayer A's name with Financial Institution B. However, Company C issued a check for Amount D and mailed it to Taxpayer A. The distribution check of Amount D did not identify the funds as coming from an IRA account. The distribution check was stated as a "Redemption Check" and "undirected cash". At this time Taxpayer A was also receiving distributions from other non-qualified accounts of Individual M and believed that the check for Amount D was from a non-qualified account.

Taxpayer A represents that she is aware of the IRA distribution and rollover rules. Individual M, her husband, had two other IRA accounts from which she received death distributions and these distributions were rolled over into her IRA account within the 60-day period.

Taxpayer A further represents that if she had been aware that the distribution check of Amount D from Company C was from IRA X, she would have rolled it over into her IRA account. Taxpayer A deposited Amount D into her savings account and it has not been used for any other purpose.

Based on the facts and representations, Taxpayer A requests that the Internal Revenue Service (the Service) waive the 60-day rollover requirement with respect to 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, or 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 an error by Company C. In this case, Company C did not make the trustee-to-trustee transfer of Amount D as Taxpayer A had requested, but mailed a check to Taxpayer A which she believed was a distribution from a non-qualified account of Individual M.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the contribution

of Amount D into a rollover IRA 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, which may be applicable thereto.

This letter 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 as precedent.

If you have any questions regarding this letter, please contact xxxxxxxxxxxx, xxxxxxxxxxxx, at xxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T:2

Sincerely yours,



Sherri M. Edelman, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose