



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201542010

U.I.L. 408.03-00

JUL 22 2015

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SE:T:EP:RA:T2

Legend:

- Decedent A = XXXXXXXXX
- Taxpayer B = XXXXXXXXX
- IRA X = XXXXXXXXX
- Bank C = XXXXXXXXX
- Amount D = XXXXXXXXX
- Financial Institution E = XXXXXXXXX
- Court F = XXXXXXXXX
- State S = XXXXXXXXX
- Date 1 = XXXXXXXXX
- Date 2 = XXXXXXXXX
- Date 3 = XXXXXXXXX
- Date 4 = XXXXXXXXX
- Date 5 = XXXXXXXXX
- Date 6 = XXXXXXXXX
- Date 7 = XXXXXXXXX

Dear xxxxxxxx:

This is in response to your request dated November 11, 2014, as supplemented by correspondence dated February 12, 2015, and May 14, 2015, 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 B represents that Decedent A requested a distribution of Amount D from IRA X with the intent to rollover Amount D into another rollover IRA with Bank C. Taxpayer B 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 his death.

Taxpayer B represents that Decedent A was not happy with the rate of return on IRA X and on Date 1, Decedent A requested a distribution of Amount D from IRA X to be wired to his Bank C checking account.

On Date 2, Financial Institution E wired Amount D to Decedent A's Bank C checking account. On Date 3, Decedent A was found dead. On Date 4, Taxpayer B, mother of Decedent A, was appointed executrix of Decedent A's estate under the laws of State S. On Date 5, Bank C closed Decedent A's checking account and Amount D was transferred to a new account at the same bank, Bank C, in the name of Decedent A's estate.

On Date 6, Court F issued an order approving the final distribution from Decedent A's estate. On Date 7, pursuant to the Court order, Taxpayer B closed the account at Bank C which was established in the name of Decedent A's estate and transferred the balance in the estate's checking account into a checking account in her own name at the same bank, Bank C.

Taxpayer B represents that she could not complete the rollover because she was unaware of the distribution of Amount D from IRA X until she received a Form 1099-R issued to Decedent A from Financial Institution E in February 2014.

Based on the foregoing facts and representations, you request 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 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 60<sup>th</sup> 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 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 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 or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

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 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.

Taxpayer B has not presented adequate evidence to the Service that shows Decedent A's intent to roll over Amount D from IRA X into a rollover IRA. The information presented and the documentation Taxpayer B has submitted is consistent with her assertion that Decedent A took a distribution totaling Amount D from IRA X, but no rollover IRA was established and there was no documentation signed by Decedent A showing his intent to establish a rollover IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

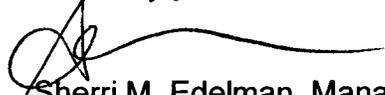
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

A copy of this letter is being sent to your authorized representative pursuant to 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.

If you have any questions concerning this ruling, please contact xxxxxx, xxxxxx, at xxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T2.

Sincerely yours,



Sherri M. Edelman, Manager  
Employee Plans Technical

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: