



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

201603044

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 22 2015

Uniform Issue List: 408.03-00

T: EP: RA: A2

Legend:

Decedent A =

Taxpayer B =

IRA C =

IRA D =

IRA E =

IRA F =

IRA G =

IRA H =

IRA I =

IRA J =

Financial Institution U =

Financial Institution V =
 Financial Institution W =
 State X =
 Amount 1 =
 Amount 2 =

Dear :

This is in response to your request dated December 2, 2011, as supplemented by correspondence dated June 9, 2014, and October 7, 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.

Taxpayer B is the surviving spouse of Decedent A and the personal representative of Decedent A's estate. Taxpayer B represents that Decedent A, prior to her death on October 7, 2011, received distributions on July 18, 2011, and July 19, 2011, from her IRAs equal to Amount 1. 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 her mental condition which impaired her ability to make sound financial decisions. Taxpayer B represents that he used part of Amount 1 to pay federal and state taxes on the distribution and the remainder, Amount 2, is available to be rolled over into an IRA.

Prior to her death, Decedent A maintained IRA C with Financial Institution U; IRA D, IRA E, and IRA F with Financial Institution V; and IRA G, IRA H, IRA I, and IRA J with Financial Institution W (collectively, "IRAs").

Taxpayer B represents that Decedent A became convinced that funds in her IRAs should be withdrawn and invested in real estate. Taxpayer B attempted to dissuade her of this plan and encouraged her to meet with her attorney. Decedent A met with her attorney who strongly discouraged the transaction. However, due to her diminished mental capacity, Decedent A disregarded the attorney's advice.

On July 18, 2011, and July 19, 2011, Decedent A took a distribution from each of her IRAs which totaled Amount 1. On July 23, 2011, Decedent A deposited Amount 1 into her savings account. On September 9, 2011, during the 60-day period, Decedent A became hospitalized for a workup of her altered mental status. Taxpayer B submitted a

letter from her physician stating that Decedent A had non-reversible dementia, and, as a result, she lacked decision-making capacity in all personal and business matters. On October 7, 2011, Decedent A died. Following her death, Taxpayer B paid taxes on the distribution of Amount 1 and retained Amount 2 in a money market account.

Based on the facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount 2.

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.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) 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 or 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)(C)(i) of the Code provides that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than IRA owner's spouse, as a result of the death of the IRA owner.

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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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).

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) 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.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary of an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

Generally, if the proceeds of a decedent's IRA are payable to a trust or estate (or both), and are paid to the trustee of the trust, who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse is treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, is not eligible to roll over the distributed IRA proceeds into her own IRA. However, the general rule will not apply where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

The information presented and documentation submitted by Taxpayer B are consistent with Taxpayer B's assertion that Decedent A's failure to accomplish a timely rollover was due to her mental condition which impaired her ability to make sound financial decisions.

Assuming that Taxpayer B, as personal representative of Decedent A's estate, is authorized under the laws of State X to complete a rollover of the distribution of Amount 1, the Service hereby waives the 60-day rollover requirement with respect to Amount 2.

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Taxpayer B is granted a period of 60 days from the issuance of this letter ruling to contribute an amount not more than Amount 2 into a rollover IRA in the name of Decedent A or in Taxpayer B's own name. 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 2 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 408(a)(6) of the Code. This ruling does not address any issues relating to section 401(a)(9).

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.

A copy of this letter is being sent to your authorized representatives 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 wish to inquire about this ruling, please contact

Sincerely yours,

David M. Ziegler, Manager
Employee Plans Actuarial Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

CC:

CC: