201615024

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 11 2016

U.I.L. 408.03-00

SE:T:EP:RA:T3

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Legend:

Taxpayer A	= xxxxxxxxxxx
Decedent B	= xxxxxxxxxxx
IRA X	= xxxxxxxxxxx
Trust T	= xxxxxxxxxxx
Bank C	= xxxxxxxxxxx
Amount D	= xxxxxxxxxxx
Individual M	= xxxxxxxxxxx
Date 1	= xxxxxxxxxxx
Date 2	= xxxxxxxxxxx

Dear xxxxxxxxxxxx:

This letter is in response to your request dated July 7, 2015, as supplemented by correspondence dated September 8, 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 A received a distribution of Amount D on Date 2 from IRA X. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Individual M and Bank C.

Taxpayer A's husband, Decedent B was the owner of IRA X. Decedent B passed away on Date 1. Decedent B named Taxpayer A as primary beneficiary of IRA X.

On Date 2, upon the direction of Individual M, Amount D was transferred from IRA X to Trust T without Taxpayer A's authorization or consent. It was never Taxpayer A's intention to create a taxable distribution.

Taxpayer A represents that she does not recall ever giving permission to Individual M to transfer IRA X to Trust T. Taxpayer A further represents that Bank C never had her sign any paperwork directing that IRA X be transferred to her trust account.

Documentation submitted by Individual M, states that Taxpayer A did not sign any such paperwork because of an oversight on the part of Bank C. Individual M further states that before the transfer, he did not inform her of the ability to make a spousal rollover.

Taxpayer A first became aware that the transferring of IRA X to Trust T was a taxable event when she went to her accountant for preparation of her 20 income tax return.

Based on the foregoing facts and representations, you request 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 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 requires generally that any amount distributed from a qualified trust or individual retirement plan must be transferred to an eligible retirement plan no later than the 60^{th} day following the day of receipt in order to avoid inclusion in the distributee's gross income.

Section 408A of the Code and Treasury Regulations (Regulations) sections 1.408A-1 through 1.408A-9 provide the rules governing Roth IRAs. Section 1408A-1, Q&A1 (b) of Regulations provides, in relevant part, that Roth IRAs are treated as traditional IRAs except where the Code specifies different treatment.

Section 1.408A-6, Q&A 14(b) of the Regulations provides, in relevant part, that if the sole beneficiary of a decedent's Roth IRA is the decedent's spouse, such spouse may delay distributions until the decedent would have attained age 70-1/2 or may treat the Roth IRA as his or her own.

Section 1.408A-8, Q&A1(b)(10) of the Regulations provides that the phrase "treat an IRA as his or her own" means to treat an IRA for which a surviving spouse is the sole beneficiary as his or her IRA after the death of the IRA owner in accordance with the terms of the IRA instrument or in the manner provided in the regulations under section 408(a)(6) or (b)(3) of the Code.

Section 1.408A-2, Q&A 4, of the Regulations provides in relevant part, that the effect of a surviving spouse of a Roth IRA owner treating a Roth IRA as his or her own as of a date, the Roth IRA is treated from that date forward as though it were established for the benefit of the surviving spouse and not the original Roth IRA owner.

Section 1.408-8, Q&A 5, of the Regulations provides that a surviving spouse may elect to treat the spouse's entire interest as a beneficiary in 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

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.

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.

The information presented and documentation submitted is consistent with Taxpayer A's assertions that the failure to accomplish a timely rollover was due to an error committed by Individual M and Bank C.

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 D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover Roth IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount D 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.

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 with this office.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxx, xxxxxxxxxxxxxxxxxxxxxx at xxxxxxxxxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,

for Ada Perry
Carolyn E. Zimmerman, Acting Manager
Employee Plans Technical Group 3

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

Cc:
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