



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201742034

JUL 24 2017

Uniform Issue List: 408.03-00

T:EP:RA:TI

Legend

Taxpayer A =

Individual B =

IRA C =

SEP-IRA D =

Financial Institution E =

Financial Institution F =

State M =

Amount 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This is in response to your request dated April 14, 2017, as supplemented by correspondence dated July 14, 2017, 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 represents that she received a distribution equal to Amount 1 from IRA C, which was maintained by Financial Institution E. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code was because her spouse failed to fulfill legal requirements under the laws of State M during divorce proceedings.

Taxpayer A owned IRA C with Financial Institution E. IRA C was established for the purpose of consolidating Taxpayer A's two IRA accounts into a single IRA. Based on the representations and documentation submitted, the consolidation was accomplished through trustee-to-trustee transfers from the IRAs into IRA C.

On Date 1, Taxpayer A filed for divorce from her husband, Individual B. On Date 2, Individual B informed Taxpayer A that as of Date 3 she would be unemployed because he was closing his medical practice. This action was in violation of an injunction issued during the divorce proceedings. Subsequently, Individual B assured Taxpayer A that, given the upcoming divorce mediation, he would provide Taxpayer A with the funds necessary to purchase a place to live. Individual B remained in custody of the marital home.

Based on Individual B's assertions and legal obligations under the laws of State M, on Date 4, Taxpayer A withdrew Amount 1 from IRA C in order to purchase a residence. However, Individual B failed to provide Taxpayer A with any funds in connection with the divorce mediation. On Date 5, a date after the 60-day rollover period, a judge in a district court of State M ordered the transfer of Amount 1 from Individual B's SEP-IRA to Taxpayer A's SEP-IRA D which is maintained by Financial Institution F. The court order also stated that Taxpayer A should not be liable for any tax with respect to Amount 1. On Date 6, Amount 1 was transferred into Taxpayer A's SEP-IRA D.

Based on the above facts and representations, you request a ruling that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code as to the distribution of Amount 1 from IRA C.

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)(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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that the Service will issue a ruling waiving the 60-day rollover requirement in cases 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 taxpayer. 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.

The information and documentation submitted are consistent with Taxpayer A's assertion that the failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) of the Code was because her spouse failed to fulfill legal requirements under the laws of State M during divorce proceedings.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution equal to Amount 1 from IRA C. Provided all other requirements of section 408(d)(3), except the 60-day requirement, were met with respect to the contribution of Amount 1 to SEP-IRA D, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

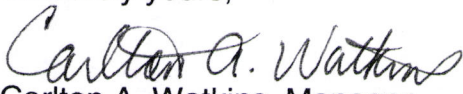
This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

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.

If you wish to inquire about this ruling, please contact
at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,


Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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