



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201849018

SEP 10 2010

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend

Decedent A =

Executor B =

Individual C =

Individual D =

IRA E =

Financial Institution F =

State G =

Amount 1 =

Year 1 =

Year 2 =

Date 3 =

Date 4 =

201849018

Date 5 =  
Date 6 =  
Date 7 =  
Date 8 =

Dear :

This is in response to your request dated July 20, 2018, as supplemented by correspondence dated August 20, 2018, and August 23, 2018, in which you request, through your authorized representative, 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.

Executor B, the son and personal representative of Decedent A, and the sole executor of Decedent A's estate, represents that Decedent A, at age [redacted], received a distribution in cash equal to Amount 1 from IRA E, which was maintained by Financial Institution F. Individual B asserts that Decedent A failed to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code because of an acute medical condition that caused severe cognitive impairment.

Prior to his death, Decedent A owned IRA E with Financial Institution F. Beginning in Year 1, Decedent A's family observed signs of Decedent A's mental decline. On Dates 4, 5, and 6, Decedent A was diagnosed by three different physicians as suffering from significant cognitive impairment, which had worsened over time and had occurred in a persistent pattern over a period of several years. During this period, on Date 3 of Year 2, Decedent A withdrew Amount 1 from IRA E. On Date 7, Executor B was appointed by a circuit court in State G to serve as Decedent A's guardian. On Date 8, Decedent A passed away. Decedent A was survived by his three children: Executor B, Individual C, and Individual D.

After being appointed as the guardian of Decedent A, Executor B discovered that Decedent A failed to file a federal income tax return for Year 2. Executor B promptly filed the return to report the distribution. Executor B represents that Amount 1 has not been used for any other purpose.

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 in cash of Amount 1.

Section 408(a) of the Code defines an individual retirement account to mean a trust created or organized in the United States, and requires that the trustee be a bank or an approved non-bank trustee.

Section 408(b) of the Code defines an individual retirement annuity to include an annuity contract that is issued by an insurance company and satisfies certain requirements.

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)(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 Executor B's assertion that Decedent A failed to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) of the Code due to an acute medical condition that caused severe cognitive impairment.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution in cash equal to Amount 1. Executor B has 60 days from the issuance of this letter ruling to contribute cash in an amount not exceeding Amount 1 into an IRA established in the name of Decedent A. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, will be met with respect to the contribution of Amount 1, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

We note that the scope of Executor B's authority as executor of Decedent A's estate is a matter of state law. This ruling assumes that Executor B's actions relevant to the ruling request contained herein are in accordance with the laws of State G and taken pursuant to Executor B's authority.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code, and it does not address any other issues relating to sections 408(a)(6) and 401(a)(9).

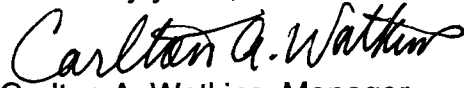
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact  
. 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

cc: