



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200526024

UICs: 408.03-00
9100.00-00

APR 06 2005

SE.T.EP.RA.T3

LEGEND:

Taxpayer A:

Taxpayer B:

Company S:

IRA X:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Charity U:

Charity V:

Annuity Agreement W:

Annuity Agreement X:

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Dear [REDACTED]

This is in response to the [REDACTED] letter in which you, through your authorized representative, request an extension of the 60-day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code applicable to individual retirement accounts ("IRAs"). Your request to the Internal Revenue Service ("Service") is based on the following facts and representations.

Taxpayer A, who had attained age 71 as of the date of this ruling request, and who was married to Taxpayer B, owned IRA X, an individual retirement account ("IRA") set up and maintained in his name with Company S. On or about Date 1, 2003, Taxpayer A withdrew Amount 1 from his IRA X. On or about Date 2, 2004, which was approximately five (5) weeks after Date 1, 2003, Taxpayer A entered into Annuity Agreement W with Charity U, and Annuity Agreement X with Charity V. Taxpayer A paid Amount 2, approximately one-half of Amount 1, for the annuity purchased under each of said annuity agreements. In exchange for each annuity, Taxpayer A made an "irrevocable gift" totaling Amount 2 to the respective charity. Furthermore, Taxpayer A received "Federal charitable income tax deductions" in exchange for each gift. When filing his calendar year 2003 Federal Income Tax Return (Form 1040), Taxpayer A realized that his Date 1, 2003 withdrawal of Amount 1 from IRA X constituted a taxable distribution.

The 60-day rollover period applicable to Taxpayer A's withdrawal of Amount 1 from his IRA X expired on or about Date 3, 2004.

Taxpayer A died on Date 4, 2004 which was after Date 3, 2004, the date in which the 60 day rollover period applicable to the distribution of Amount 1 from IRA X expired. This ruling request was submitted by Taxpayer B, Taxpayer A's widow and the executrix of his estate.

Based on the facts and representations, you, Taxpayer B, request that the Internal Revenue Service waive the 60-day rollover requirement found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") with respect to the distribution of Amount 1 from IRA X because the failure to waive such requirement would be a hardship and against equity or good conscience.

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 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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.

Revenue Procedure 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), 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 on behalf of Taxpayer A demonstrates that the failure of Taxpayer A to make a rollover contribution of Amount 1 distributed from IRA X to either IRA X or another IRA within 60 days of receiving Amount 1 was due to Taxpayer A's gifting almost all of Amount 1, in equal installments, to Charities U and V. Only after Taxpayers A and B realized that the transactions entered into between Charities U and V and Taxpayer A had Federal income tax consequences did Taxpayer B seek to avoid said consequences by asking the Service to permit her to roll Amount 1 into another IRA.

Therefore, pursuant to Code section 408(d)(3)(I), under the set of facts presented above, the Service hereby declines to waive the 60-day rollover requirement with respect to the withdrawal of Amount 1. As a result, Taxpayer B, on behalf of Taxpayer A (deceased) is not granted any period of time to make a rollover contribution of Amount 1 distributed from IRA X to another IRA set up and maintained in Taxpayer A's name.

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.

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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 [REDACTED], Esquire, (I.D. [REDACTED]) at ([REDACTED]) (phone-not a toll-free number), or [REDACTED] (FAX). Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

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