



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 28 2005

Uniform Issue List: 408.03-00

Legend:

Taxpayer A.....

Amount P

Company S

Company T.....

IRA X.....

IRA Y.....

Dear :

This is in response to a letter dated April 26, 2005, as supplemented by correspondence dated August 9, 2005, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). You submitted the following facts and representations under penalty of perjury in support of your request.

Taxpayer A, age 79, represents that she received a distribution from IRA X totaling Amount P. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the death of her spouse of 40 years, and the resulting grief from his death. Taxpayer A further represents that Amount P has not been used for any other purpose.

Taxpayer A maintained IRA X, an Individual Retirement Annuity ("IRA") under section 408(b) of the Code, with Company S. Acting on the advice of her elder law attorney, on August 24, 2004, Taxpayer A requested a surrender of IRA X in order to pay for the cost of a nursing home for her spouse of 40 years. On September 4, 2004, Taxpayer A received a distribution from IRA X, of Amount P, and on September 9, 2004, she purchased a non-IRA certificate of deposit ("CD") with Company T in this amount. Before the expiration of the 60-day rollover period, on October 14, 2004, Taxpayer A's spouse died. Taxpayer A's resulting grief from the loss of her spouse of 40 years affected her ability to make financial decisions including returning Amount P back into an IRA. Subsequent to the expiration of the 60-day rollover period, on March 18, 2005, Taxpayer A purchased an IRA annuity, IRA Y, with Company S in Amount P.

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

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 defines, and 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 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.

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) 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), 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 by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by the death of her spouse within the 60-day rollover period.

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 P from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to IRA Y, Amount P, contributed to IRA Y on March 18, 2005, 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 401(a)(9) 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

Sincerely yours,

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
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