



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

200520038

Uniform Issue List 408.03-00

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Legend

SE.T:EP:RA:T3

Taxpayer A = ***
Taxpayer B = ***
Amount C = ***
Bank D = ***
Bank E = ***
IRA X = ***
IRA Y = ***

Dear ***:

This is in response to your letter dated November 30, 2004 supplemented by faxed information dated January 28, 2005 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, whose date of birth was ***, died on ***, without having attained age 70 1/2. Taxpayer A and Taxpayer B owned IRA X and IRA Y, respectively, with Bank D. It has been represented that IRA X and IRA Y were and/or are individual retirement accounts ("IRAs") described in Code section 408(a). Taxpayer B is Taxpayer A's surviving spouse and was the sole primary designated beneficiary of Taxpayer A's IRA X. On ***, Taxpayers A and B executed an election authorization form for IRA X and IRA Y, respectively, pursuant to which each chose to receive a lump sum distribution of his/her account balance. This was done to facilitate a rollover of these respective funds into new IRA accounts with more liquidity.

On or about October 21, 2004 Taxpayer A and Taxpayer B received their respective IRA checks via mail and deposited the amounts into a joint checking account. Taxpayer A's IRA X distribution totaled Amount C.

On ***, Taxpayer A was admitted into a hospital. On ***, prior to the expiration of the 60-day rollover period prescribed in section 408(d)(3)(A) of the Code, Taxpayer A died. Taxpayer A had not reinvested her funds in another IRA as of her date of death. Taxpayer A was 70 years old as of her date of death.

On November 18, 2004, Taxpayer B contacted the Internal Revenue Service ("Service") for advice upon realizing that the power of attorney he had to perform actions on behalf of Taxpayer A had lapsed due to her death. Also on this date, Taxpayer B sent a check in the amount of Amount C to Bank D along with a letter of explanation asking Bank D to redeposit said check in Taxpayer A's IRA X. Taxpayer B called Bank D on *** and *** to follow up on the status of the above-noted request. Bank D orally informed Taxpayer B on approximately November 29, 2004 that it would not redeposit the funds in Taxpayer A's IRA X without a private ruling letter from the Service. Taxpayer B again called the Service, which informed Taxpayer B as to how to apply for a private letter ruling. On December 6, 2004, Bank D informed Taxpayer B in writing that they were returning his check for Amount C sent on November 18, 2004. Upon receipt, Taxpayer B voided the check.

On ***, Taxpayer B rolled over his own lump sum distribution obtained from IRA Y into a certificate of deposit at Bank E, which was within the 60-day rollover period found in Code section 408(d)(3)(A).

Upon receiving a letter ruling granting a waiver of the 60-day rollover requirement, Taxpayer B will promptly deposit Amount C either into IRA X initially set up in Taxpayer A's name or into a new IRA set up and maintained in Taxpayer A's name.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount C, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should 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)(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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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) 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 (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.

Code Section 401(a)(9)(B)(ii) provides, that where an employee dies prior to distribution of the employee's interest having begun in accordance with section 401(a)(9)(A)(ii), the distribution of the employee's entire interest must be made within 5 years after the death of the employee. Said period of time has been extended to the end of the fifth calendar year following the calendar year which contains the IRA holder's date of death pursuant to "Final" Income Tax Regulations promulgated under Code section 401(a)(9).

Code section 408(a)(6) provides, in relevant part, that the minimum distribution requirements of Code sections 401(a)(9) apply to IRAs described in Code section 408(a).

The information presented by Taxpayer B demonstrates that Taxpayer A had requested a lump sum distribution, totaling Amount C, of her IRA X account balance for the eventual purpose of redepositing said Amount C into another IRA promising more liquidity, and that the check dated approximately *** representing the distributed amount was

deposited into a checking account. Taxpayer A did not timely roll over the funds represented by the check into an IRA set up and maintained in her name because of her death on ***, which was within the 60-day period prescribed by 408(d)(3)(A). Also, on or about November 18, 2004, Taxpayer B, in good faith, attempted to redeposit the check in an IRA with Bank D and was precluded from accomplishing this by Bank D, which insisted on Taxpayer B's obtaining a private letter ruling from the Service.

Therefore, based on the above facts, 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 C from IRA X. Taxpayer B, as surviving spouse of Taxpayer A, is granted a period of 60 days from the date of this ruling letter to redeposit Amount C into either IRA X or a new IRA set up in Taxpayer A's name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, this amount 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 (made applicable to IRAs under section 408(a)(6) of the Code).

The Service notes that any IRA (other than IRA X) into which Amount C may be rolled over will not have a designated beneficiary as that term is defined in Code section 401(a)(9)(E). Thus, the Code section 401(a)(9) distribution period with respect to any rollover IRA (other than IRA X) referenced above is that applicable to an individual who died prior to having attained her required beginning date without having designated a beneficiary thereof. In accordance with Code Section 401(a)(9)(B)(ii) and the "Final" regulations promulgated thereunder, if any portion of Amount C is rolled over into a new IRA set up in Taxpayer A's name, the total rolled over portion must be distributed by the end of the fifth calendar year following the calendar year which contained the date of her death.

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 either *** or ***. Please address all correspondence to SE:T:EP:RA:T3.

200520038

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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