

201047030



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

AUG 30 2010

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Legend:

Taxpayer A:

Taxpayer B:

IRA X:

Account Y:

Financial Institution J:

Financial Advisor P:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Amount M:

Dear :

This is in response to letters dated February 23, 2010, April 22, 2010, and July 26, 2010, 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 B died on Date 3. Taxpayer B maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution J of which Taxpayer A, Taxpayer B's surviving spouse, was the sole beneficiary. Taxpayer A, age asserts that on Date 1, she received a distribution of the proceeds of IRA X, Amount M, and that her failure to accomplish a rollover of Amount M was due to her mental condition resulting from the death of her husband. Taxpayer A has not used Amounts M for any other purposes.

Financial Advisor P became Taxpayer A and Taxpayer B's financial advisor on Date 2 and periodically reviewed Taxpayer B's finances and estate planning. After Taxpayer B's death Financial Advisor P advised Taxpayer A to elect a rollover of IRA X to a spousal IRA.

Financial Institution J sent papers to Taxpayer A to transfer the proceeds of IRA X to an account to be maintained in Taxpayer A's name. Taxpayer A returned the papers believing she was establishing an IRA, however, Taxpayer A had not checked the "spousal continuance box" properly. Taxpayer A represents that she was confused and suffering from the loss of her husband at the time she signed the documents. Taxpayer A reported to Financial Advisor P that she had signed documents transferring IRA X to an account in her name. Financial Advisor P did not ask to review the documents and erroneously assumed that Taxpayer A had established a spousal rollover account when, in fact, she had signed a death benefit claim form provided by Financial Institution J which authorized a lump sum payment and the deposit of Amount M into Account Y, a non-IRA account on Date 4.

On Date 5 Taxpayer A wrote to inform Financial Institution J that she recently discovered that Account Y was not an IRA and asked to have Amount M placed in her name as an IRA. Financial Institution J wrote Taxpayer A on Date 6 and informed Taxpayer A that Financial Institution J could not make the change in the

account without permission from the Internal Revenue Service. On Date 7 Taxpayer A requested a letter from the IRS permitting the change.

On Date 8, Financial Advisor P wrote a letter to Taxpayer A expressing his regret and admitting that after Taxpayer A notified him that she had signed the documents which opened Account Y he should have monitored Taxpayer A's transfers and also admitted that had he been involved Taxpayer A would not have missed the 60 day rollover period.

Medical documentation dated Date 9 submitted by Taxpayer A indicates that Taxpayer A's mental condition was such as to adversely affect her mental functioning, mental clarity, and acuity in her decision making.

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 Amounts M contained in section 408(d)(3) of the Code ("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 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA 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)(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 60<sup>th</sup> 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 60<sup>th</sup> 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) 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.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to her mental condition resulting from the death of her husband.

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 to Taxpayer A of Amount M. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount M to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such

IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

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.

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.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Please address all correspondence to

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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