



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201443032

JUL 31 2014

Uniform Issue List: 408.03-00

T. EP. RA. T. 3

Legend:

- Decedent A = ***
- Surviving Spouse D = ***
- Amount B = ***
- Financial Institution C = ***
- IRA X = ***
- IRA Y = ***

Dear ***:

This is in response to your request submitted on your behalf by your authorized representative dated October 10, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Surviving Spouse D represents that Decedent A received a distribution from IRA X totaling Amount B. Surviving Spouse D asserts that Decedent A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his medical condition which caused him to be hospitalized during and after the 60-day period. Surviving Spouse D further represents that Amount B has not been used for any other purpose.

Decedent A had been suffering from a terminal form of brain cancer and on July 7, 2013, he passed away outside the United States while seeking alternative treatment to sustain his life. Decedent A had experienced a history of having large medical bills that were initially denied by his health insurance company, but then ultimately found to be covered. As a result, money to cover conventional medical expenses became a concern. As Decedent A's deteriorating condition and prognostics began worsening in 2013, Surviving Spouse D and Decedent A became more and more drained challenging the insurance company for reimbursement. During the entire term of Decedent A's illness Decedent A and Surviving Spouse D used a great deal of their own money to pay for medical treatments.

On March 6, 2013, Decedent A and Surviving Spouse D decided to withdraw Amount B from IRA X. This decision was predicated on their concern that they could be subject to a heavy and immediate need for the funds should medical expenses not be covered for conventional medication, treatment and care by their insurance carrier. They also intended to redeposit the money within the allotted time period if not needed, as it became more and more apparent that Decedent A's condition was worsening and hope for his survival was quickly diminishing. The funds were never used.

Decedent A was hospitalized on May 3, 2013, just a few days before the 60-day rollover period expired. Surviving Spouse D, who had not previously handled the family's financial affairs, and who was physically and emotionally distraught over her husband's pending death, did not realize that Decedent A had missed the 60-day rollover period until late May, about two weeks after the period expired. Decedent A then completed the necessary paperwork and had Amount B deposited into IRA Y on May 29, 2013.

Surviving Spouse D has provided documentation showing the nature of Decedent A's illness and the period of his hospitalization.

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

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.

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) 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) 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 presented and documentation submitted by Surviving Spouse D is consistent with her assertion that Decedent A's failure to accomplish a timely rollover of Amount B was due to his medical condition which hospitalized him during and after the 60-day 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 B from IRA X on

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March 6, 2013. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to the contribution of Amount B into IRA Y on May 29, 2013, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) 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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact * * * at * * *. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:

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