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

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 09 2015

201606032

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend

Taxpayer A =

Decedent B =

IRA C =

Trust D =

Account E =

IRA F =

Financial Institution G =

Financial Institution H =

Amount 1 =

Dear :

This is in response to your request dated January 26, 2015, as supplemented by correspondence dated August 24, 2015, and September 22, 2015, in which you request, through your authorized representative, 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 penalties of perjury in support of the ruling requested.

Taxpayer A represents that on February 26, 2013, her deceased husband's estate received a distribution from IRA C equal to Amount 1. Taxpayer A, the executor of his estate, asserts that her failure to roll over the distribution from IRA C to her own IRA within the 60-day period described in section 408(d)(3) was due to emotional distress following the untimely death of her spouse, Decedent B, and the stress of serving as executor of estate.

Taxpayer A was married to Decedent B on December 18, 2012, the date of Decedent B's death. Prior to his death, Decedent B owned IRA C, an individual retirement arrangement ("IRA") described in section 408(a) of the Code. IRA C was maintained by Financial Institution G, and Decedent B's estate was the beneficiary of IRA C.

Taxpayer A and Decedent B were the Trustees of Trust D until Decedent B's death, at which time Taxpayer A became the sole Trustee of Trust D. Decedent B's Last Will and Testament provided that his estate pass through to the Trustee of Trust D. You represent that on Decedent B's death, Taxpayer A, as sole trustee and beneficiary under Trust D, had full authority under governing law to distribute the assets of IRA C to herself.

On February 26, 2013, Taxpayer A requested a lump sum distribution from IRA C equal to Amount 1. On March 12, 2013, a date within the 60-day rollover period, Taxpayer A deposited Amount 1 into Account E, a non-IRA account held in the name of Decedent B's estate and maintained by Financial Institution H. On September 27, 2013, after the expiration of the 60-day rollover period, Taxpayer A requested that Amount 1 be transferred into her own IRA, IRA F. IRA F was also maintained by Financial Institution H. Amount 1 was deposited into IRA F on September 30, 2013. Taxpayer A represents that Amount 1 has not been used for any other purpose.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA C.

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 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 or 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)(C)(i) of the Code provides that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than IRA owner's spouse, as a result of the death of the IRA owner.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary of an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

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) 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) 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.

Generally, if the proceeds of a decedent's IRA are payable to a trust or estate (or both), and are paid to the trustee of the trust, who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse is treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, is not eligible to roll over the disturbed IRA proceeds into her own IRA.

However, the general rule will not apply where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

In this case, Decedent B designated his estate as the beneficiary of his IRA, and Taxpayer A was the executor of his estate, which passed through to Trust D. Taxpayer A was also the sole Trustee of Trust D and had the power to distribute the assets of IRA C from Trust D to herself. Thus, Taxpayer A could have taken a distribution from IRA C and rolled it over into an IRA in her name. However, Taxpayer A was emotionally distraught following her husband's untimely death and overwhelmed by the responsibility of handling his estate.

The information and documentation submitted by Taxpayer A are consistent with her assertion that the failure to accomplish a rollover of Amount 1 from IRA C into her own IRA within the 60-day period prescribed by 408(d)(3)(A) of the Code was due to the emotional distress following her husband's death and the stress of administering his estate.

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 1 from IRA C. Provided all other requirements of section 408(d)(3), except the

60-day requirement, are met with respect to such contribution, the contribution of Amount 1 to IRA F will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) 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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact
at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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

cc: