



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200436020

JUN 10 2004

Uniform Issue List: 408.03-00

Legend:

Individual A =

Individual B =

Insurance
Company C =

IRA X =

IRA Y =

Amount D =

Date M =

Date N =

Date P =

Dear:

This is in response to your letter dated April 10, 2003, in which your authorized representative requested a ruling on your behalf that we waive the 60-day rollover requirement in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request:

Individual B maintained IRA X and other policies at Insurance Company C. Individual B died on Date M with Individual B's spouse, Individual A, as the beneficiary of IRA X. Individual A suffered from depression and memory loss after the death of her spouse. Prior to Date N in a family meeting, Individual A expressed the intent to establish her own IRA with any IRA distributions resulting from Individual B's death. Individual A,

through an employee of the administrator of Individual B's estate, took a distribution from IRA X of Amount D on Date N. The claim forms for Individual B's interests with Insurance Company C did not disclose that one of the contracts was IRA X and no information supplied with the distribution from IRA X clearly indicated that the distribution was an IRA distribution. Amount D was distributed to Individual A in the form of a cash account with Insurance Company C.

After the expiration of the 60-day period, Individual A's accountant discovered that the distribution of Amount D was from an IRA. Individual A then deposited Amount D into IRA Y on Date P. Individual A made no rollovers from an IRA within the one year period prior to or after Date N.

Individual A attained age 70 ½ during _____ Individual A timely received the minimum required distributions for calendar years _____ and _____ as required under section 401(a)(9) of the Code, as made applicable to an IRA pursuant to section 408(b)(3).

Individual A requests a ruling that the Service waive the 60-day rollover requirement because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)(I) 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 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)(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 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, 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; and (4) the time elapsed since the distribution occurred.

The information presented indicates that there was confusion and errors surrounding the distribution of Amount D from IRA X beyond the control of Individual A which prevented Individual A from satisfying the requirement that Amount D be deposited to establish her own IRA within 60 days of the distribution.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D that was rolled over into IRA Y, provided all other requirements of section 408(d)(3) are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount D will be considered as a rollover contribution within the meaning of section 408(d)(3) for the 2002 taxable year.

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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

In accordance with a power of attorney on file with this office, this ruling letter and other documents pertinent to this ruling have been sent to your authorized representative.

If you have any questions please contact....

Sincerely yours,

Donzel H. Littlejohn, Manager
Employee Plans Technical Group 4