



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

200544030

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG 09 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. TI

Legend:

Taxpayer =

Taxpayer A =

IRA B =

Custodian C =

Custodian D =

Custodian E =

Bank F =

Account G =

Amount H =

Dear :

This letter is in response to a request for a letter ruling dated March 29, 2005, as supplemented by additional information dated May 23, 2005, in which you have applied for 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:

The Taxpayer's spouse, Taxpayer A, maintained IRA B, an Individual Retirement Annuity ("IRA") under Code section 408(b), with Custodian C. Taxpayer A died on September 29, 2004.

Taxpayer A was an insurance agent and the Taxpayer did not have detailed knowledge of the life insurance policies or annuities that Taxpayer A had purchased. After the death of Taxpayer A, the Taxpayer made inquiries to Custodians C, D, and E on the steps necessary to file claims on life insurance or the IRA investments of Taxpayer A. Custodians D and E identified Taxpayer A's IRA accounts and advised the Taxpayer in rolling these accounts into her own IRAs. The representatives of Custodian C did not identify IRA B as an IRA annuity and advised the Taxpayer on the steps to cash in this account.

In October of 2004, the Taxpayer filed a death benefit claim with Custodian C. The Taxpayer received a check dated October 26, 2004, totaling Amount H. On November 2, 2004, the Taxpayer deposited Amount H in Account G, a non-IRA account with Bank F. At the time the Taxpayer filed the death claim she was not aware Taxpayer A's annuity was an IRA. In addition, no employee of Custodian C informed the Taxpayer that the annuity was an IRA and that a 60-day rollover period applied to any distribution. Due to the grief over the loss of the Taxpayer's husband as well as complications the Taxpayer experienced from surgery for cancer on August 26, 2004, and subsequent chemotherapy treatments, the Taxpayer did not determine the true identity of IRA B until after the expiration of the 60-day period. Amount H continues to remain in Account G and has not been used by the Taxpayer.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount H because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) 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 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) provides that the Secretary 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, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to Code 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 demonstrates that the failure to rollover Amount H was due to the Taxpayer's unfamiliarity with Taxpayer A's investments on his death, her reliance on the advice of Custodian C to identify the annuity as an IRA, and her ongoing health problems during this period. Amount H has remained at all times in Account G.

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount H. The Taxpayer is granted a period of 60 days from the issuance of this ruling letter to make the rollover. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3).

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 \_\_\_\_\_, SE:T:EP:RA:T1,  
I.D. \_\_\_\_\_ at \_\_\_\_\_

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

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