

INTERNAL REVENUE SERVICE

200546048

AUG 22 2005

Uniform Issue List: 408.03-00

SE: T: EP: RA: T3

Legend:

Individual A =

Company B =

IRA X =

Amount C =

Account D =

Dear [REDACTED]:

This is in response to correspondence dated April 8, 2005, as supplemented by correspondence dated August 1, 2005, submitted on your behalf by your authorized representative in which you requested 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:

Your husband, Individual A, died on July 4, [REDACTED]. Individual A maintained an Individual Retirement Arrangement (IRA), IRA X, with Company B. You were the surviving spouse and were named as beneficiary of IRA X. Your date of birth was July 20, 1935.

In a letter dated November 14, 2003, addressed to Individual A deceased, Company B requested that current account information regarding IRA X be provided to them. The letter stated that if any information was incorrect, corrections should be made on an enclosed form and returned to Company B. Company B would then confirm the changes and mail an annual verification of the information. You received this request from Company B on or about November 26, 2003. On the Investor Profile For Individual

A section, you crossed out his name and wrote "deceased 7/4/ [REDACTED] funds to go to (your name) IRA". In the Personal Information section, you changed all information related to Individual A to information describing yourself, such as date of birth. You mailed this information to Company B on December 3 [REDACTED]. Your intent in changing the account information was to effect a distribution of Individual A's IRA X account balance and its subsequent rollover into an IRA created by Company B on your behalf as surviving spouse and beneficiary.

Instead of a rollover to an IRA created for you, Company B transferred the total account balance of IRA X, Amount C, into Account D. Account D is a non-IRA account established in your name as executor of the estate of Individual A. This distribution from IRA X and subsequent transfer to Account D occurred during November [REDACTED]. Since the establishment of Account D, no amounts have been withdrawn or used for any purposes.

When you received Form 1099-R from Company B, which indicated a distribution from IRA X of Amount C, you gave this form to your accountant for the preparation of your [REDACTED] income tax return. Your accountant prepared your [REDACTED] tax return and indicated that the IRA X distribution was rolled over to a qualified plan.

In the fall of [REDACTED] your accountant asked you to forward documentation of income and expenses for the estate of Individual A so that he could prepare and file the income tax return for the estate of Individual A. At that time, you noticed that Company B did not roll over the IRA X distribution into an IRA established for you, which was your intent. You immediately contacted Company B by telephone, fax and letter and advised it that the account should be an IRA in your name. Company B refused to change the title of the account which it maintained.

Based on the facts and representations, you request the following rulings:

1. The Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution from IRA X to the extent that said IRA assets do not contain a required minimum distribution with respect to Individual A for the year of his death in the calendar year 2003.
2. Any required minimum distribution from IRA X with respect to Individual A for the year of his death plus earnings thereon may not be rolled over.

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 one-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)(l) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) 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)(l) 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)(l) 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.

“Final” Income Tax Regulations under section 401(a)(9) of the Code were published in the Federal Register on April 17, 2002 (see 67 Federal Register 18988). The Preamble to the “Final” Regulations provides, in relevant part, that a surviving spouse who is the beneficiary of a deceased IRA holder may elect to treat the deceased’s IRA as his or her own IRA at any time after the death of the deceased as long as the minimum required distribution for the year of death is taken. In the same vein, if a surviving spouse/beneficiary chooses to roll over the IRA of his or her deceased spouse into an IRA in his or her name, he or she may not roll over the required distribution for the year of death.

Section 1.408-8 of the "Final" Regulations, Q & A-5(a), provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in 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. Consistent with the language of the Preamble, Q & A-5(a) further provides that the election can be made only after the required distribution for the year of death, computed with respect to the deceased's IRA, is taken.

Your intent was to roll over the account balance in IRA X to an IRA established in your name at Company B. To this end, on the Investor Profile For Individual A section of correspondence you received from Company B requesting corrected account information, you crossed out Individual A's name and wrote "deceased 7/4/03, funds to go to (your name) IRA". In the Personal Information section of that letter, you changed all information related to Individual A to information describing yourself. You mailed this information to Company B on December 3, [REDACTED]. Your intent in changing the account information was to effect a distribution of Individual A's IRA X account balance and its subsequent rollover into an IRA created by Company B on your behalf as surviving spouse. When your accountant prepared your [REDACTED] tax return, he indicated that the IRA X distribution was rolled over to a qualified plan. You thought that you had accomplished a rollover to an IRA and you believed that the notations on the Company B forms were sufficient to convey said intent to Company B. You subsequently discovered that such a rollover was not made and that Amount C was distributed from IRA X and placed into Account D, a non-IRA account. Since the establishment of Account D, no amounts have been withdrawn or used for any purposes.

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 C (less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount C (less amounts described below) into a Rollover IRA set up and maintained in your name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the contribution of Amount C in your IRA will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Furthermore, with respect to your ruling requests, in accordance with the language from the Preamble to and section of the "Final" Regulations cited above, this letter ruling does not authorize the rollover into an IRA set up and maintained in your name of the Code section 401(a)(9) minimum required distribution for 2003 (the year of Individual A's death) and earnings thereon.

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 expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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.

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Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact _____, I.D. # _____, at _____ (not a toll free number). Please address all correspondence to _____.

Sincerely yours,



, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose