

200420037



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Uniform Issue List: 408.03-00

FEB 18 2004

Legend:

Taxpayer A =  
Taxpayer B =  
Bank C =  
Bank D =  
Amount E =  
IRA X =  
  
IRA Y =

Dear

This is in response to a ruling request submitted by you on \*\*\*\*\*, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A maintained an individual retirement account, IRA X, with Bank C. He requested a total distribution of Amount E from IRA X which he received on \*\*\*\*\*. Soon after this distribution, Taxpayer A, who had suffered for some time on an ongoing basis from severe health problems that included pneumonia and internal bleeding, was hospitalized in serious condition from which he could not

recover. Taxpayer A remained in the hospital in grave condition until he died on \*\*\*\*\*. On \*\*\*\*\* , shortly after the expiration of the 60-day rollover period, Taxpayer B established an IRA rollover account, IRA Y, at Bank D and deposited Amount E in the name of Taxpayer B as surviving spouse of Taxpayer A. Taxpayer A was \*\* years old at the time of his death and Taxpayer B was \*\* at the time of these transactions.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E from IRA X because the failure to waive such requirement would be against equity or good conscience.

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 or 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 or 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)).

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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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, 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 (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 by Taxpayer B demonstrates that Taxpayer A's illness and subsequent death prevented him from rolling over Amount E into another IRA. These facts and circumstances indicate that the taxpayers could not reasonably satisfy the requirement that Amount E be deposited in an IRA within 60 days of the distribution from IRA X, and the failure to waive the 60-day requirement would be against equity and good conscience.

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 E. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount E deposited into IRA Y on \*\*\*\*\*, 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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact  
, ID , at

Sincerely yours,

*/s/ Donzell Littlejohn*

Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted cop of letter