



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 31 2005

SET:EP:BA:T/

Uniform Issue List: 408.03-00

Legend:

- Taxpayer A = *****

- Taxpayer B = *****

- Custodian D = *****
- IRA C = *****
- Amount 1 = *****
- Amount 2 = *****
- Amount 3 = *****
- State E = *****

Dear *****.

This is in response to your letter, received October 14, 2004, as supplemented by additional correspondence from your authorized representative dated December 16, 2004 and April 14, 2005, and additional correspondence from you dated July 11, 2005, in which you request 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.

Taxpayer A's spouse, Taxpayer B, maintained IRA C, an Individual Retirement Account ("IRA") under Code section 408(a), with Custodian D. In 2004, Taxpayer A was 73 years of age and Taxpayer B was 79. In May 2004, Taxpayer B was in a nursing home following back surgery and suffering from Alzheimer's disease. Taxpayer A has indicated that Taxpayer B was generally incompetent and incapable of handling her own affairs. Taxpayer A states he was informed by officials of the nursing home in which Taxpayer B resided, that State E rules required that he "spend down" the funds in Taxpayer B's IRA in order for Taxpayer B to qualify for Medicaid. At the time Taxpayer B was receiving a required minimum distribution of Amount 1 and Taxpayer A was the sole beneficiary of IRA C.

Documentation submitted indicates that Taxpayer A requested a distribution form from Custodian D and completed the form on Taxpayer B's behalf requesting a complete distribution of IRA C. Taxpayer A's authorized representative indicates that under the laws of State E, Taxpayer A did not have the requisite authority to request a distribution of Taxpayer B's IRA and therefore the transfer to Taxpayer A would, under the laws of state E, constitute a void or voidable transaction. Notwithstanding this fact, on May 7, 2004, Custodian D issued a check in Taxpayer B's name for Amount 2, withholding Amount 3 for Federal Income Tax. Taxpayer A deposited Amount 2 in a joint checking account with Taxpayer B. On May 19, 2004, Taxpayer B died.

Taxpayer A states that after Taxpayer B's death he sought to redeposit Amount 2 into Taxpayer B's IRA but was told by Custodian D that the account had been closed. Taxpayer A's authorized representative indicates that since Taxpayer A did not have the authority to request a distribution from Taxpayer B's IRA that he should be legally entitled to rescind the transaction and to repay the funds to Custodian D. To date Custodian D has refused such request and Amount 2 remains in the joint checking account.

Based on the foregoing, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA C so that he can redeposit the funds into IRA C or contribute the proceeds from such IRA to an IRA in his own name.

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) 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) 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).

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.

Documentation submitted in this case shows that in May 2004, Custodian D issued a check in the name of Taxpayer B for Amount 2, representing Taxpayer B's entire interest in IRA C. Documentation submitted with the request shows that prior to Taxpayer B's death on May 19, 2004, Amount 2 was deposited into a joint checking account of Taxpayers A and B. Taxpayer A states that he intended to use Amount 2 for Taxpayer B's medical and nursing home expenses; however, Taxpayer B died before any of the proceeds of IRA C could be used for such purpose. Amount 2 remains in the joint checking account of Taxpayers A and B. Taxpayer A is Taxpayer B's surviving spouse and wants to redeposit Amount 2 back into IRA C or roll over Amount 2 into an IRA in his own name.

In May 2004, when Custodian D distributed the entire proceeds of IRA C to Taxpayer B, Taxpayer A was not Taxpayer B's surviving spouse or Taxpayer B's beneficiary because Taxpayer B was still alive. Taxpayer A did not become Taxpayer B's surviving spouse until May 19, 2004, a date which is subsequent to the date Custodian C distributed the proceeds of IRA C. Taxpayer A asks the Service to waive the 60-day rollover requirement under Code section 408(d)(3)(I) so that he can redeposit Amount 2 back into IRA C or roll over the proceeds from IRA C into an IRA in his own name which he could have done if he had received a distribution of the proceeds from IRA C as Taxpayer B's surviving spouse.

IRA C was closed in May 2004, when Custodian D made a distribution of the entire proceeds of IRA C to Taxpayer B. When Taxpayer B died, Amount 2 was in the joint checking account of Taxpayers A and B, which is neither an IRA within the meaning of Code section 408(d)(3)(A)(i) nor a qualified individual account plan within the meaning of Code section 408(d)(3)(A)(ii). Amount 2 was not received by Taxpayer A as Taxpayer B's surviving spouse and as such is not a qualifying distribution eligible for rollover treatment under Code section 408(d). There is nothing in the Code or Income Tax Regulations that would permit the Service to allow Taxpayer A to redeposit the proceeds of IRA C back into the deceased Taxpayer's IRA nor to restore in Taxpayer A any options he may have been entitled to under Code section 408(d) as Taxpayer B's surviving spouse.

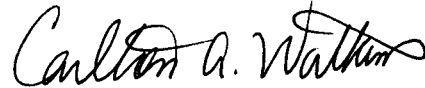
Therefore the request to waive the 60-day rollover period is denied with respect to the distribution of Amount 2 from IRA C and Amount 2 will not be considered a rollover contribution under Code section 408(d)(3)(A).

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 [REDACTED] by telephone at [REDACTED] or by fax at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose