



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200608025

NOV 28 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. TI

Legend:

- Taxpayer A.....
- Amount P
- Company S
- Company T.....
- Company U.....
- Account V.....
- Account W.....
- IRA X.....

Dear :

This is in response to a letter dated April 25, 2005, as supplemented by correspondence dated June 18, 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"). You submitted the following facts and representations under penalties of perjury in support of your request.

Taxpayer A, age 63, represents that she received a distribution from IRA X totaling Amount P. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's responsibility in providing full-time care for her 98-year old mother. Taxpayer A further represents that Amount P has not been used for any other purpose.

For a number of years, Taxpayer A has been the sole caregiver for her elderly and infirm mother. Since February of 2004, Taxpayer A's mother has been unable to feed, bathe or dress herself. In June of 2004, Taxpayer A's mother

was diagnosed with dementia and in August of 2004, Taxpayer A's mother became completely bedridden.

Taxpayer A maintained IRA X, an Individual Retirement Account ("IRA") under Code section 408(a), with Company S. The entire account balance in IRA X was invested in a money market fund. On July 27, 2004, at the request of Taxpayer A, all shares held by IRA X were redeemed because Taxpayer A intended to roll over the entire account balance (Amount P) to an IRA with Company T. On July 29, 2004, Amount P was transferred by wire from IRA X to Account V, a non-IRA savings account with Company U. In attempting to complete a timely rollover to an IRA with Company T, on August 16, 2004, Taxpayer A drew a personal check on Account V in Amount P. However, on August 17, 2004, Taxpayer A's mother was admitted to the hospital for a serious medical condition. Two days after her mother was admitted to the hospital, on August 19, 2004, Taxpayer A mistakenly deposited Amount P into Account W, a non-IRA savings account with Company T. On August 21, 2004, her mother was discharged from the hospital whereupon Taxpayer A continued to provide full-time care for her mentally and physically infirm mother.

In January, 2005, Taxpayer A reinvested Amount P in non-IRA certificates of deposit ("CDs") with Company T in order to receive higher interest. However, Taxpayer A was unaware that the CDs were not IRAs. On February 25, 2005, Taxpayer A discovered that Amount P was not invested in an IRA when she met with her accountant to prepare her [REDACTED] federal income tax return.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount P 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 IRA rollovers and provides the rules applicable thereto.

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

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 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).

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).

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 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.

In this case, Taxpayer A was providing around-the-clock care for her 98-year old mother who was completely bedridden and suffered from dementia. Due to this intensive responsibility and involvement, and two days after her mother was admitted to the hospital for a serious medical condition, Taxpayer A incorrectly deposited Amount P into a non-IRA savings account. Because Taxpayer A intended to accomplish a rollover, Amount P was never spent. As the sole provider for her mother's care, Taxpayer A did not realize her mistake until she met with her accountant to prepare her [REDACTED] tax return. Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount P. Taxpayer A will be granted a period of 60 days from the date of the issuance of this letter to roll over Amount P to an IRA. Provided all other requirements of section 408(d)(3) are met with respect to such contribution, this amount will be considered a rollover contribution 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 Code section that may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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