



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200831026

MAY - 8 2008

Uniform Issue List: 408.03-00

*SEP: T: EP: RA: T3*

Legend:

Taxpayer A =

IRA X =

Date 1 =

Month 2=

Date 3=

Court N =

Order and Judgment G =

Guardian R =

Amount C =

State V =

Dear :

This is in response to a letter dated December 21, 2007, submitted on your behalf by your authorized representative, 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, age 82, asserts through her guardian, Guardian R, that on Date 1 Taxpayer A received a total distribution of IRA X in Amount C and that her failure to accomplish a rollover of Amount C was due to the effects of a mental condition which was such as to impair her ability to make sound financial decisions or to understand the consequences of her actions.

Taxpayer A had suffered two injuries at home and subsequently listed her home for sale so she could relocate to be near her son in State V. As part of the preparation for moving to State V, Taxpayer A with the help of her son, closed all bank accounts and requested a total distribution of Amount C from IRA X on Date 1. On the evening of Date 1, however, Taxpayer A recanted her agreement to move to her son's location and her son then returned to his home in State V, leaving his mother at her home in compliance with her wishes.

Taxpayer A's son returned three weeks after Date 1 to assist Taxpayer A who was unable to remember where the IRA X distribution check was placed.

During Month 2 Taxpayer A's niece assisted Taxpayer A in obtaining a replacement check for Amount C but the 60-day rollover period had already expired. Amount C was deposited in a non-IRA account and Taxpayer A's son petitioned Court N for appointment of a guardian for Taxpayer A. Taxpayer A's niece then kept Taxpayer A's bankbook for safekeeping.

The petition alleged that Taxpayer A, was suffering from severe mental incapacities and had been exhibiting behavior such that family members became concerned about Taxpayer A's mental capacity. Subsequently, on Date 3 Order and Judgment G was issued by Court N that Guardian R would take control of Taxpayer A's financial affairs.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount C, contained in section 408(d)(3) of the Code ("the Code").

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 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)).

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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) 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.

Rev. Proc. 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)(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 and documentation submitted by Taxpayer A is consistent with Guardian R's assertion that Taxpayer A's failure to accomplish a rollover of Amount C was due to her mental condition which was such as to impair her ability to make sound financial decisions or understand the consequences of her actions.

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 C from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount C to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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.

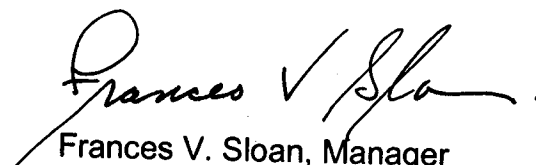
200831026

Page 5

If you wish to inquire about this ruling, please contact  
Please address all correspondence to

SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose