



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200405017

NOV 3 2003

Legend:

Taxpayer A = *****

Taxpayer B = *****

IRA Annuity X = *****

Amount C = \$*****

County D = *****

Credit Union = *****

Account = *****

City E = *****

State F = *****

Dear *****:

This is in response to a request submitted on your behalf by your authorized representative for a letter ruling dated April 14, 2003, as supplemented on June 4, 2003, requesting a waiver of the 60-day rollover period with respect to a proposed rollover of a distribution from an IRA annuity by you as the surviving spouse.

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested:

Taxpayer B was born *****, 1939, and died *****, 2002, before he had attained age 70½. Taxpayer A was born *****, 1944, and she is the surviving spouse of Taxpayer B.

Taxpayer B was the owner of IRA Annuity X. The contract was payable to the estate of Taxpayer B. Under Taxpayer B's Will, Taxpayer B's entire estate is payable to Taxpayer A, and Taxpayer A is his designated personal representative.

There are no other devisees and no disclaimers involved in this case. Taxpayer B's Will has now been filed with the Probate Court of County D, State F, a court of competent jurisdiction, and Taxpayer A has been appointed personal representative.

Taxpayer A's investment advisor helped her collect the assets and accounts after Taxpayer B's death. Taxpayer A explained to him that she wished to preserve the family investments without tax consequences. He advised her about the collection of the IRA Annuity X contract and prepared the claim form for her signature. He incorrectly advised Taxpayer A that she would not be required to include any distribution IRA Annuity X in her gross income for federal income tax purposes.

On August 6, 2002, Taxpayer A filed an individual claim form with the insurance company holding RA Annuity X, and by check dated November 8, 2002, she received a distribution of Amount C payable to the estate of Taxpayer B, Taxpayer A, as executor, representing her entire interest under IRA Annuity X. On December 10, 2002, Taxpayer A deposited the check into her personal Account at the Credit Union.

In January 2003, Taxpayer A received Form 1099-R reporting that the November 8, 2002 distribution as taxable.

Taxpayer A has kept the entire distribution in a separate account, Account at the Credit Union, has not spent the distribution or made use of it, and has not commingled the distributed assets with any other assets. Upon approved of this letter ruling, she will immediately transfer the amount of the original distribution to an IRA account at the Credit Union.

In connection with her request for a waiver of the 60-day time period for making a rollover to a spousal IRA, the following rulings are requested.

That Taxpayer A, as the surviving spouse of Taxpayer B, was eligible to make a qualified rollover of the proceeds of the IRA Annuity into an IRA set up and maintained in the name of Taxpayer A.

That the 60-day deadline for making a qualified rollover to a qualified spousal IRA is waived for the benefit of Taxpayer A.

That Taxpayer A be permitted to transfer the proceeds of IRA Annuity (Amount C) currently held in her account at the Credit Union in City E, State F, to a spousal IRA so long as the transfer is completed within 60 days of the date of this letter.

With respect to the first ruling, 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)(C)(i) of the Code provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

On April 17, 2002, "Final" Income Tax Regulations were published in the Federal Register with respect to Code Sections 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002.) Section 1.408-8 of the "Final" Regulations, Question and Answer 5, 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. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the "Final Regulations" provides, in relevant part, that the surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary if the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Generally, if a decedent's IRA pass through a third party, e.g., an estate, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from a third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the IRA proceeds into his or her own IRA.

However, in a situation where an estate is the beneficiary of the IRA, the surviving spouse is the sole personal representative of the estate with sole discretion to allocate and pay estate assets; the surviving spouse, as sole personal representative, allocates IRA assets and the surviving spouse is the sole beneficiary under the Will to whom the IRA assets are allocated, then for purposes of section 408(d)(3) of the Code, the Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the estate.

Here, Taxpayer A is the surviving spouse of Taxpayer B and the sole executor of Taxpayer B's estate. Taxpayer B's estate is the beneficiary of IRA X which was distributed to his estate. Taxpayer A, as sole personal representative of Taxpayer B's estate, had the authority and discretion to allocate assets to Taxpayer A under the Will, and the IRA Annuity X assets were allocated and then distributed to Individual A, the beneficiary.

With respect to the first ruling request, the distribution of the proceeds of IRA Annuity X to Taxpayer B's estate followed by the distribution of those same from Taxpayer B's estate to Taxpayer A, the surviving spouse, and the contribution by Taxpayer A of those same assets to her own IRA would have qualified as a rollover contribution by Taxpayer A within the meaning of section 408(d)(3) of the Code, except that the rollover was not accomplished within 60 days.

Section 408(d)(3)(l) 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 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.

Rev. Proc. 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)(l), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; 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.

Information presented in this case demonstrates substantial hardship, and indicates that the Taxpayer A could not reasonably satisfy the requirement that Amount C be deposited in an IRA within 60 days of the distribution from IRA Annuity X. Taxpayer A relied on her investment advisor who told her incorrectly that the IRA Annuity proceeds were tax-free. Under these circumstances, we believe that she relied on professional advice and that the failure to deposit Amount C into another IRA set up and maintained in her name within the 60-day period was beyond the reasonable control of Taxpayer A, and the failure to waive the 60-day requirement would be against equity or 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 IRA X of the Amount C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute amount C, in cash, into another IRA provided all other requirements of section 408(d)(3) of the Code are satisfied, except the 60-day requirement with respect to such contribution, then, this amount will be considered a rollover contribution with 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, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney filed with this office.

If you have any questions please contact

at

Sincerely yours,



Alan C. Pipkin, Jr., Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose, Notice 437