



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201010032

DEC 16 2009

Uniform Issue Code: 408.03-00

SE: T: EP: RA: T4

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Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXXX
- Guardian E = XXXXXXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX
- Account F = XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX
- Account Z = XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXXXXXXXX
- Bank U = XXXXXXXXXXXXXXXXXXXXX
- Financial Institution W = XXXXXXXXXXXXXXXXXXXXX
- Court M = XXXXXXXXXXXXXXXXXXXXX
- Date 1 = XXXXXXXXXXXXXXXXXXXXX
- Date 2 = XXXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXXXXXX

Date 5 = XXXXXXXXXXXXXXXXXXXX

Year M = XXXXXXXXXXXXXXXXXXXX

Year N = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXX

This is in response to your ruling request dated April 21, 2009, and supplemented by a letter dated August 14, 2009, as submitted by your authorized representative, in which you, as the Court Appointed guardian of Taxpayer A, request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code") for a distribution made by Taxpayer A from IRA X.

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

Guardian E represents that Taxpayer A, age 63, received a distribution from IRA X totaling Amount D. Guardian E, asserts that Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to her mental condition which impaired her ability to make sound financial decisions or understand the consequences of her actions during the 60-day period. Guardian E further represents that Amount D has not been used for any other purpose.

Guardian E represents and has submitted documentation showing that Taxpayer A suffers from severe mental disability. On Date 1, prior to Guardian E's appointment, Taxpayer A requested and received a distribution of Amount D from IRA X which was deposited into a non-IRA account at Bank U. Documentation shows that Taxpayer A has been treated for mental health conditions since Year M. On Date 2, Taxpayer A was awarded Social Security Disability (SSD) status and has received SSD payments since then. In Year N, a mental health center, labeled Taxpayer A's condition as "severe" and found her to be highly nonfunctional and dependent on her parents with whom she lived until they passed away. After the parents death, her uncle, an accountant, handled Taxpayer A's financial affairs until Date 3, when Taxpayer A forced him to relinquish such control. Taxpayer A's mental condition deteriorated over time and on Date 4, a neighbor filed a Petition for Guardianship with Court M. The examining committee members found Taxpayer A to be incapacitated and her sister was appointed as Plenary Guardian. The sister later resigned and on Date 5, Court M appointed Guardian E to replace her.

Since the establishment of the guardianship with Guardian E, Taxpayer A has been living in an assisted living facility. Guardian E now handles all of Taxpayer A's decision making and financial affairs. Taxpayer A's assets have been transferred to Account Z held by Financial Institution W, a court ordered depository account.

Taxpayer A's sister received a Notice from the IRS indicating that Taxpayer A owed taxes, and was being assessed interest and a penalty as a result of having received a distribution from IRA X. The Notice was faxed to Guardian E who is addressing all of Taxpayer A's business matters. The effects of Taxpayer A's long standing mental health conditions restricted her ability to handle her financial affairs and complete the rollover transaction within the 60-day rollover period prescribed by section 408(d)(3) of the Code.

Based on the facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

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 account is maintained if:

- 1) 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 he receives the payment or distribution; or
- 2) the entire amount received (including money and 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 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).

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) 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 (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) of the Code, 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 and documentation submitted by Guardian E, on behalf of Taxpayer A, is consistent with the assertion that Taxpayer A's failure to accomplish a timely rollover of Amount D into an IRA within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to her mental health conditions which affected her ability to handle her financial affairs and complete a rollover within the required 60-day rollover period.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Guardian E is granted a period of 60 days from the issuance of this ruling letter to redeposit Amount D into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D 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 which may be applicable thereto.

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 by others as precedent.

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A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact XXXXXXXXX, ID Number XXXXX XXXXXXXX at XXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Ada Perry
Laura B. Warshawsky, Manager,
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose