



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200516022

JAN 25 2005

UIC: 9100.00-00

SE: T: EP: RA: T3

Legend:

- Individual A =
- Individual B =
- Individual C =
- Individual D =
- Individual E =
- Individual F =
- Amount C =
- Amount D =
- Company G =
- Company H =
- Trust T =
- IRA Annuity
X =
- State Z =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =

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Month 1 =

Month 2 =

Month 3 =

Month 4 =

Dear [REDACTED] :

This is in response to a request dated [REDACTED], submitted on behalf of the personal representative of Individual B, now deceased, by her authorized representative, as supplemented by correspondence dated [REDACTED], and [REDACTED], for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The authorized representative has submitted the following facts and representations in support of the ruling request:

Individual A, a resident of State Z, whose date of birth was Date 1, 1928, was the holder of IRA Annuity X with Company G at his death which occurred on Date 2, 2003. The date of death value of IRA Annuity X was approximately Amount D. At his death, Individual A was married to Individual B. Individual A was also survived by his daughters, Individual C and Individual D. As of Date 2, 2003, Individual A had attained age 70 ½.

Individual A had purchased IRA Annuity X during Month 1, 2003. Individual B was named the sole primary beneficiary of Individual A's IRA Annuity X. The value of IRA Annuity X at the time of purchase was approximately Amount C.

By means of a "Durable Power of Attorney ("DPOA")" executed on or about Date 3, 1995, Individual B named Individuals C and D as her co-attorneys in fact to serve if Individual A was ever unwilling or unable to act as such. It has been represented that the DPOA was valid under the laws of State Z. Article IV of the DPOA, titled "Banking Transactions," gives Individual B's attorneys in fact the authority to take actions listed therein with respect to Individual B's accounts or deposits in financial institutions. "Financial Institution" was defined as "...banks, savings associations, and other financial institutions".

It has been represented that Individual B had been suffering from the effects of Alzheimer's disease from Month 4, 2001 until her death during Month 2, 2004.

Subsequent to Individual A's death, on or about Date 4, 2003, Individual C, one of the co-attorneys in fact of Individual B, acting within her authority under the DPOA, with the assistance of her financial advisor, Individual E, completed a Company H option election form on behalf of her mother, Individual B, which was intended to effectuate a rollover of the amounts standing in Individual A's IRA Annuity X into an IRA set up and maintained in the name of

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Individual B with Company H. This action was taken after a discussion with Individual D, the other co-attorney in fact of Individual B, and pursuant to the "DPOA" referenced above. On the form completed on or about Date 4, 2003, titled "Application For Annuity", the section headed "Owner" was to be left blank if the annuity was to be an IRA annuity. This section was completed. Furthermore, in another section headed "Plan" a number of options were provided including "IRA". In this section, the choice selected was "Other-Annuity". The "Application For Annuity" was signed by Individual C on behalf of Individual B and by Individual E, as agent of Individual C. Individual B did not sign said form. Individual C is the beneficiary named on the Date 4, 2003, application. Individual B had attained age 70 ½ as of Date 4, 2003.

As noted above, Individual B died during Month 2, 2004. Month 2, 2004, did not fall within 60-days of Date 4, 2003. Subsequent to Individual B's death, during Month 3, 2004, Company H advised Individual C, in writing, that Company H had issued Individual B a non-qualified, non-IRA, annuity, pursuant to the Date 4, 2003, application, and could not convert said non-IRA annuity to an IRA annuity. Furthermore, as a result of the issuance of said non-IRA annuity, a taxable distribution in the amount of Amount D had been made to Individual B.

The documentation which accompanied this application for letter ruling includes an affidavit signed by Individual E which indicates, in relevant part, that "...the intention of the transfer was to be under the IRA/qualified provision". Your authorized representative indicates that the transfer referenced in the affidavit was the transfer effectuated by the Date 4, 2003 application.

A Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc, which accompanied this ruling request indicates that Individual B received a taxable distribution in Amount D with respect to the 2003 calendar year.

With respect to the above referenced Form 1099-R, your authorized representative has asserted, on your behalf, that after the death of Individual B, during calendar year 2004, Individual C, as administrator of the estate of Individual B, contacted Individual F, an employee of Company H, to inquire as to appropriate steps to take with respect to Individual B's IRA. In response to Individual C's inquiry, Company H determined that Individual B did not have an IRA at her death due to the manner in which the Date 4, 2003, Application had been completed. This led to Company H's Month 3, 2004 correspondence with Individual C, referenced above. Furthermore, Company H also determined that it had failed to issue a Form 1099-R with respect to the calendar year 2003 transfer into a non-qualified annuity. The above referenced Form 1099-R was then issued as a result of Individual C's inquiry, several months after the 60-day rollover period applicable to Individual A's IRA Annuity X had expired, and after Individual B's death.

Your authorized representative has also asserted that the Month 3, 2004 letter to Individual C and the Form 1099-R, referenced above, represent the only correspondence received by Individual C indicating that the Date 4, 2003, Application effectuated a transfer of Individual A's IRA Annuity X into a non-IRA annuity.

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Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution from IRA Annuity X of Amount D because the failure to waive such requirement would be against equity or good conscience, and permit Amount D to be rolled over into an IRA set up and maintained in the name of Individual B.

With respect to your ruling request, 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)(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 paragraph (d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, in short, under circumstances that conform with the requirements of Code section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

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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), 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 issue presented in this case is whether Code section 408(d)(3)(I) and Rev. Proc. 2003-16 apply to a situation where a surviving spouse, eligible to roll over her deceased husband's IRA Annuity X into an IRA, or IRA Annuity, set up and maintained in her name, fails to do so under the circumstances described above including, but not limited to, her death after the expiration of the 60-day period prescribed by Code section 408(d)(3)(A).

In this case, Individual C was handling Individual B's financial affairs pursuant to the above-referenced DPOA. Exercising her authority under said DPOA, Individual C accomplished a transfer of Individual A's IRA Annuity X into a non-IRA annuity in Individual B's name. Said transfer was contrary to Individual C's intentions, and was due in part to the reliance of Individual C on the advice of Individual E, the agent and financial advisor of Individual C. It has been represented that Individual B, because of her medical condition, was not handling her own financial affairs at the time of the transfer, Date 4, 2003.

Individual C only became aware that the Date 4, 2003 transfer of IRA Annuity X had not been made into another IRA sometime during Month 3, 2004 which was after the death of Individual B after Company H had conducted a review of the contract. At that point, Company H issued a Form 1099-R indicating that the Date 4, 2003 transfer resulted in a taxable distribution from Individual A's IRA Annuity X.

In this case, we note that Company H failed to issue the Form 1099 on a timely basis. If it had, either Individual B, or Individual C acting on her behalf, could have taken corrective action with respect to the Date 4, 2003 transfer referenced above during Individual B's lifetime. Said action could have included a request for an extension of the 60-day rollover period based on the facts shown above. However, because of the timing of the issuance of the Form 1099-R, Individual C did not know that any corrective action was necessary until Individual B had died. Thus, no adverse consequences should attach to Individual C's not requesting this letter ruling during Individual B's lifetime.

If this request had been submitted during Individual B's lifetime, the Service would have granted relief under Code section 408(d)(3)(I) based on the representations contained herein.

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As noted above, the Service's response will not change even though Individual B is deceased. 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 D, and interest thereon, from IRA Annuity X to a non IRA annuity. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover of Amount D into an IRA, or IRA annuity, set up and maintained in the name of Individual B (Deceased). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into another IRA, or IRA annuity, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

The Service notes that the rollover IRA, or IRA annuity, into which Amount D will be contributed, will not have a "designated beneficiary" as that term is defined in Code section 401(a)(9). Thus, the Code section 401(a)(9) distribution period with respect to the rollover IRA, or IRA annuity, will be that applicable to an IRA owner who had reached her required beginning date and died without designating a beneficiary of her IRA.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code

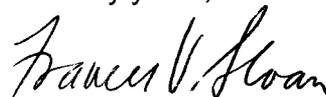
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This 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.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact [REDACTED], Esquire (ID: [REDACTED]) at either [REDACTED] (Phone) or [REDACTED]. 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 ruling letter
- Notice of Intention to Disclose