



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

200913070

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 31 2008

UIL: 9999.98-00

SE: T: EP: RA: T1

Legend:

- Taxpayer A = *****

- Taxpayer B = *****

- Financial Institution C = *****

- Financial Institution D = *****

- Account E = *****

- Account F = *****

- Account G = *****

- Tax Preparer = *****
- Amount 1 = *****
- Amount 2 = *****
- Amount 3 = *****
- Amount 4 = *****
- Amount 5 = *****
- Amount 6 = *****
- Amount 7 = *****

Dear *****:

This is in response to a letter dated September 7, 2007 in which your authorized representative requests, on your behalf, 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, currently age **, was the owner of Account E, an individual retirement arrangement ("IRA") established and maintained at Financial Institution C. As of ***** **, ****, Account E was valued at Amount 7. Taxpayer A's spouse (Taxpayer B) was the primary beneficiary of the Account E.

Taxpayer A has been in declining health for several years. Representations and documentation submitted by his physician, his authorized representative, his Tax Preparer, and his spouse all concur in a description of Taxpayer A as having become mentally incapacitated to such an extent that, by the middle of ****, he was no longer able to understand the tax consequences of his actions; nor could Taxpayer A complete a proper rollover of his IRA assets within the 60-day time period authorized by the Code.

As of ***** **, ****, Taxpayer A had withdrawn Amount 1 from IRA Account E¹ during the **** calendar year. On ***** **, ****, Taxpayer A withdrew the entire remaining balance (Amount 4) from IRA Account E, and deposited an identical amount in Account F—Taxpayer A's personal checking account at Financial Institution C. Account F is not a qualified IRA. On ***** ** and **, ****, Taxpayer A deposited Amounts 5 and 6 from his checking account F into Account G, a revocable family trust established and maintained at Financial Institution D. Account G also is not a qualified IRA. By the time his Tax Preparer discovered (in ***** **, ****) that Taxpayer A had withdrawn the entire balance to his credit from IRA Account E, the 60-day period, allowed under Code section 408(d)(3) for a rollover of the Account E assets to another qualified IRA, had expired. In an interview regarding his IRA withdrawal, the Tax Preparer reported that, despite repeated explanations, Taxpayer A no longer could understand the income tax consequences of the withdrawal he had made.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 4 from IRA Account E.

¹ This appears to be the sum of one withdrawal of Amount 3, plus two periodic payments of Amount 2, as required under Code § 401(a)(9).

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 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's physicians, by his authorized representative, and by Taxpayer B is consistent with a conclusion that Taxpayer A was, and continues to be, mentally incapacitated to such an extent that it prevented him from understanding the tax consequences of his actions or from completing a proper rollover within the 60-day period authorized by section 408(d)(3) of the Code. 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 4 from IRA Account E. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 4 into a rollover IRA, less any amounts which are required to be distributed to Taxpayer A pursuant to section 408(a)(6) or 408(b)(3) of the Code. 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 4, less any amounts which are required to be distributed to Taxpayer A pursuant to section 408(a)(6) or 408(b)(3), will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

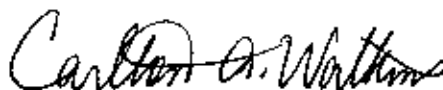
This ruling does not authorize the rollover of those portions of Amount 1 that are required under section 408(a)(6) or 408(b)(3) of the Code to be distributed to the IRA owner, under rules similar to the rules found in section 401(a)(9) of the Code.

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 that may be applicable thereto.

This ruling 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.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you wish to inquire about this ruling, please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

A handwritten signature in black ink that reads "Carlton A. Watkins". The signature is written in a cursive style with a large initial 'C'.

Carlton A. Watkins, Manager
Employee Plans Technical Group 1