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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 30 2009

Uniform Issue List: 408.03-00

SE: T: EP: RA: TI

Control Number:

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

IRA D =

Financial Institution E =

Account F =

Financial Institution G =

Account H =

Account I =

Financial Institution J =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Amount 7 =

Amount 8 =

Dear :

This letter is in response to a request for a letter ruling dated February 5, 2008, as supplemented by correspondence dated May 15, 2008, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amounts 1 and 2 from your individual retirement accounts (IRAs C and D, respectively) maintained with Financial Institution E.

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

Taxpayers A and B, ages 82 and 79, respectively, represent that they took distributions from IRAs C and D totaling Amount 1 and Amount 2, respectively. Taxpayers A and B assert that their failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) of the Code was caused by their physical conditions which impaired their ability to manage their financial affairs. Amount 4 was deposited in Account F, a non-IRA certificate of deposit account with Financial Institution G on November 19, . Amount 4 has been not used for any other purpose.

Taxpayers A and B maintained IRAs C and D, respectively, individual retirement annuities under section 408(b) of the Code. Taxpayers A and B represent, that on or around November 5, 2007, they withdrew Amounts 1 and 2 (Amount 3 in total) from IRAs C and D, respectively, in order to change the investment of the IRA assets to increase their rate of return. Amount 3 was deposited into Account I, Taxpayer A's and B's joint checking account. On November 19, 2007, Amount 5 was transferred to Account H and Amount 6 remained in Account I, which were non-IRA accounts with Financial Institution J. Amounts 5 and 6 were intended to be used for insurance premiums and real estate taxes. The Taxpayers did not intend to remove Amount 4 from their retirement plans.

Taxpayers A and B suffer from various medical conditions. Taxpayer A has a heart condition requiring quadruple bypass surgery and is on dialysis for 3 hours per day 3 times a week. Taxpayer B has compressed vertebrae, a couple of which have been fractured. Both see doctors regularly and require various medications to relieve them of the symptoms

associated with these conditions. Their physical conditions impaired their ability to monitor their financial affairs.

The Taxpayers note that they acted as expeditiously as possible to preserve the status of IRAs C and D once they became aware that there had been an inadvertent distribution and the waiver request was filed within 30 days of the expiration of the 60-day period.

Based on the above facts and representations, you request 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 7 from Taxpayer A’s IRA C and Amount 8 from Taxpayer B’s IRA D (Amount 4 in total).

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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.

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) 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 presented and the documentation submitted by Taxpayers is consistent with their assertion that their failure to accomplish timely rollovers of Amounts 7 and 8 (Amount 4 in total) was due to their physical conditions which impaired their ability to manage her financial affairs.

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 Amounts 7 and 8 from IRAs C and D, respectively. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amounts 7 and 8 into rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amounts 7 and 8 will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts 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.

If you wish to inquire about this ruling, please contact _____, (I.D. # _____),
at () _____.

Sincerely yours,

A handwritten signature in blue ink that reads "Carlton A. Watkins". The signature is fluid and cursive, with the first name "Carlton" being the most prominent part.

Manager
Employee Plans Technical Group 1

Enclosures:

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