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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
SEP 03 2009

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

SET:EP:RA:TJ

Legend:

Taxpayer =

Account A =

Financial Institution B =

Physician C =

Physician D =

Financial Institution E =

Financial Institution F =

Account G =

Amount 1 =

Dear XX XXXXXXXX:

This is in response to a letter dated April 5, 2008, as modified and supplemented by additional correspondence dated February 19, 2009, March 3, 2009, and July 12, 2009, from your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Taxpayer asserts that the failure to accomplish the rollover within the 60-day period described by section 408(d)(3) of the Code was due to his mental and physical conditions which affected his memory and impaired his ability to manage his financial affairs.

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

Taxpayer was age 84 at the time of the distribution of Amount 1 from Account A, an individual retirement arrangement ("IRA") established and maintained at Financial Institution B.

Taxpayer suffers from numerous health issues, has been in declining health for several years, and is under the care of Physician C (Taxpayer's neurologist) and Physician D. Medical documentation and statements from Physicians C and D submitted with Taxpayer's request indicate the severity of his medical problems and the extent of his treatment for these conditions.

In June of 200 Taxpayer moved the funds in Account A to a taxable savings account at Financial Institution E and then, October 7, 200 to Account G at Financial Institution F in order to receive a higher rate of return. Taxpayer did not remember that the funds were from an IRA when he reinvested them, first in a savings account and then in a regular CD account (Account G). He did not become aware of this until he was contacted by his accountant, who was reviewing Taxpayer's 1099 forms and asked him why he had closed Account A. The funds continue to remain in Account G and have not been used by the Taxpayer.

Based on the above facts and representations, Taxpayer requests 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 from Account A.

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.

Section 401(a)(9) of the Code provides the rules for required minimum distributions from a qualified plan. Section 401(a)(9)(A) provides, in pertinent part, that a trust shall not constitute a qualified trust unless the plan provides that the entire interest of each employee will be distributed or commence to be distributed to such employee not later than the required beginning date. Section 401(a)(9)(C) defines the term "required beginning date" as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½, or the calendar year in which the employee retires.

The information presented and documentation submitted by Taxpayer's physicians and by his authorized representative are consistent with Taxpayer's assertion that his failure to accomplish a timely rollover was due to medical conditions which impaired his ability to manage his 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 from Account A. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 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 1 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 amounts that are required to be distributed by Code section 401(a)(9).

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 representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX
(Government I.D. Number XX-XXXXX) by phone at (XXX) XXX-XXXX or by fax
at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose
- ▶ Copy of cover letter to Authorized Representative

CC:

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