

201007081



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 25 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:T:1

Legend:

- Taxpayer A =
- Taxpayer B =
- Financial Institution C =
- Financial Institution D =
- Account E =
- Account F =
- Financial Institution G =
- IRA X =
- IRA Y =
- Amount 1 =
- Amount 2 =
- Amount 3 =
- Amount 4 =
- Amount 5 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =

Dear:

This is in response to your ruling request dated February 8, 2008, from your authorized representative, as supplemented by correspondence dated May 15, July 8, September 24, September 28, November 1, November 2 and November 5, 2009, in which you request 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 and Taxpayer B (collectively "Taxpayers") are married and file joint tax returns. Taxpayer A, age 72, represents that he withdrew funds from IRA X totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the medical condition and hospitalization of his wife during the 60-day period and his duties as a primary caregiver which impaired his ability to accomplish a timely rollover.

Taxpayer B, age 67, represents that she withdrew funds from IRA Y totaling Amount 2. Taxpayer B asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her medical condition and the treatment she was receiving which included her hospitalization during the 60-day rollover period which impaired her ability to accomplish a timely rollover.

Taxpayer A represents that he was the owner of IRA X, a qualified individual retirement arrangement ("IRA") established and maintained at Financial Institution C under the rules of section 408 of the Code. Taxpayer A represents that on Date 1 he received a distribution totaling Amount 1 (plus an additional amount which is not subject to this application for waiver) from IRA X with the intent of rolling the proceeds of Amount 1 into a qualified IRA at Financial Institution D.

Taxpayer B represents that she was the owner of IRA Y, a qualified IRA established and maintained at Financial Institution C under the rules of section 408 of the Code. On Date 1 Taxpayer B represents that she received a distribution totaling Amount 2 from IRA Y with the intent of rolling the proceeds of Amount 2 into a qualified IRA at Financial Institution D.

Soon after she received the distribution of Amount 2, Taxpayer B began having a series of medical problems, culminating in her hospitalization and surgery several weeks into the 60-day rollover period. The ruling request is accompanied by medical documentation and a statement from Taxpayer B's doctor, which indicates the severity of Taxpayer B's medical problems and the extent of her treatment for those conditions.

Taxpayer A asserts that Taxpayer B's surgery and subsequent medical problems caused a great deal of stress for both Taxpayer A and Taxpayer B and required a large time commitment to handle all of Taxpayer B's medical issues. Taxpayer A further asserts that he was the primary caregiver for Taxpayer B during the 60-day period and beyond. As the primary caregiver, Taxpayer A became responsible for the daily attention to his wife's care, which included taking her to the hospital for surgery, treatment, and doctors' follow up appointments.

Taxpayer A asserts that Amount 1 was deposited in Account E, a nonqualified, taxable account, at Financial Institution G on Date 2. Taxpayer A further asserts that he withdrew Amount 3 from Account E on Date 4 to pay federal taxes on the withdrawals from IRA X and IRA Y. An account statement for Account E as of Date 3 indicates that Account E has an ending balance of Amount 4.

Taxpayer B asserts that Amount 2 has been held in Account F, a nonqualified, taxable account, at Financial Institution G since Date 2 and has not been used for any other purpose.

Based on the above facts and representations, Taxpayers 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 distributions of Amount 1 from IRA X and Amount 2 from IRA Y.

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)(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 the documentation submitted in this case is consistent with Taxpayer A's assertion that his failure to accomplish a timely rollover of Amount 1 from IRA X was caused by the medical condition and hospitalization of Taxpayer B.

The information presented and the documentation submitted by Taxpayer B is consistent with her assertion that her failure to accomplish a timely rollover of Amount 2 from IRA Y was due to medical conditions which impaired her 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 Amount 5 (Amount 3 plus Amount 4) of the distribution from IRA X and Amount 2 from IRA Y. Pursuant to this ruling letter, Taxpayer A and Taxpayer B, respectively, are granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to, or less than, Amount 5 to an IRA (or IRAs) and an amount equal to, or less than, Amount 2 to an IRA (or IRAs) described in section 408 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 IRA contribution, the contributions of each of the Taxpayers 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 does not authorize the rollover of amounts that are required to be distributed by sections 408(a)(6) and 401(a)(9) of the Code.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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If you wish to inquire about this ruling, please contact
(Government Identification Number xx-xxxx) 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, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose

cc: