



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JAN 20 2010

Uniform Issue List: 408.03-00

Legend:

Taxpayer A = * * *

IRA X = * * *

Financial Institution B = * * *

Financial Institution C = * * *

Financial Institution D = * * *

Financial Institution E = * * *

Account F = * * *

Physician G = * * *

Hospital H = * * *

Employer I = * * *

Financial Advisor J = * * *

Amount 1 = * * *

Amount 2 = * * *

* * *

Page 2

Amount 3 = * * *

Date 1 = * * *

Date 2 = * * *

Date 3 = * * *

Date 4 = * * *

Date 5 = * * *

Date 6 = * * *

Date 7 = * * *

Date 8 = * * *

Date 9 = * * *

Date 10 = * * *

Dear * * *:

This is in response to a letter dated July 17, 2009, as modified and supplemented by additional correspondence dated September 8, 2009 and October 13, 2009, submitted on your behalf by your authorized representative, 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, age . represents that she received a distribution from IRA X totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's medical condition and treatments which impaired her ability to accomplish a timely rollover. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Prior to Date 1, Taxpayer A maintained IRA X, a SEP-IRA with Financial Institution B.

On Date 1, Taxpayer A had surgery to treat a medical condition. The surgery was performed in Hospital H under general anesthesia and caused Taxpayer A to suffer significant side effects, including drowsiness, dizziness, nausea and confusion. Following the surgery, Taxpayer A was prescribed medication for post-operative pain control and sleep.

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On Date 2, which was one day after Date 1, Taxpayer A called Financial Advisor J and requested a transfer of IRA X funds to an IRA account that she would actively manage. On Date 3, which was one day after Date 2, Taxpayer A was advised by her physician that a second surgery would be necessary to treat the medical condition. Two days later, on Date 4, Taxpayer A contacted Financial Institution C and discussed establishing a rollover IRA. Also on Date 4, Taxpayer A went to Financial Institution C's website and set up Account F, an investment account that she believed was a rollover IRA account. Taxpayer A maintains that due to the side effects of the medication that she was taking, she was unable to think clearly and inadvertently set up a non-IRA account. Documentation from Financial Institution C confirms that Account F was opened on Date 4. Three days later on Date 5, a check for Amount 1 was issued to Taxpayer A from IRA X. A second surgery was performed the next day, on Date 6. Taxpayer A continued to take medication for pain control and sleep following the second surgery. She was absent from work due to the surgeries for approximately 3 weeks, beginning on Date 1.

Three days after the surgery, on Date 7, Taxpayer A deposited the check for Amount 1 into her checking account at Financial Institution D. The next day, on Date 8, she wired Amount 2, representing most of Amount 1 to Account F from her account at Financial Institution D. Eight days later, on Date 9, she wired Amount 3, representing the remainder of Amount 1 plus an amount intended to be Taxpayer A's annual SEP-IRA contribution to Account F from her account at Financial Institution E. Two months later, on Date 10, Taxpayer A contacted Financial Institution D in order to initiate a direct transfer of the remaining funds from IRA X to Account F. At that time, she was advised by Financial Institution D that Account F was not an IRA and therefore, could not be the recipient of a direct transfer of funds from IRA X. The funds remain in Account F and have not been used by Taxpayer A.

Medical documentation and statements from Physician G, Hospital H, and Employer I submitted with Taxpayer A's request confirm her medical condition, the medications and treatment for her condition, and absence from work.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

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 documentation submitted by Taxpayer A's physician and her authorized representative are consistent with her assertion that her failure to accomplish a timely rollover was due to her medical condition and treatments which affected her mental abilities during the period of the attempted rollover, and thus impaired her ability to accomplish a timely rollover.

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 1 from IRA X. Taxpayer A 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.

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.

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

If you wish to inquire about this ruling, please contact *** (ID ***) at ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***