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COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JAN 31 2011

Uniform Issue List: 408.03-00

LEGEND:

Taxpayer A:

Trustee B:

Company N:

Court T:

County U:

State W:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Month 1:

Trust T:

Amount U:

IRA X:

Dear

This is in response to the July 1, 2009, request for letter ruling submitted by your authorized representative on your behalf, as supplemented by correspondence dated April 12, 2010, April 13, 2010, and May 14, 2010, in which your authorized representative requests a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (“Code”). The following facts and representations support your ruling request.

Taxpayer A was born on Date 1, 1962 and thus is 47 years of age. Taxpayer A formerly held IRA X with Company N. Taxpayer A has been diagnosed as having muscular dystrophy, and has been determined to be disabled by the Social Security Administration. His mother, Trustee B, is his attorney in fact pursuant to a General Durable Power of Attorney dated Date 4, 2007. Taxpayer A is eligible to receive Medicaid and other public benefits.

A State W court, Court T, County U, a court of competent jurisdiction, acting on a petition by Taxpayer A, dated Date 2, 2007, issued an order, dated Date 2, 2007, authorizing the creation of a trust for the Taxpayer’s benefit, intended to qualify as a “special needs trust” (“Trust T”) under state and federal law.

The amount required to be placed into Trust T pursuant to the terms of the above-referenced Date 2, 2007 Court T order, as amended on Date 5, 2007, was Amount U, the balance of IRA X.

On or about Date 6, 2007, Taxpayer A and Trustee B signed paperwork with Company N authorizing the amounts then held in IRA X to be transferred from IRA X to an account set up in the name of Trust T. Taxpayer A and Trustee B signed said paperwork believing that the transferred amounts would continue to be held in an individual retirement account (“IRA”). On or about Date 7, 2007, Company N denied the request to set up an IRA in the name of Trust T. On or about Date 3, 2008, pursuant to a request by the financial advisor of Taxpayer A, Company N transferred the amounts then held in IRA X, Amount U, into an account set up in the name of Trust T. The financial advisor transfer request provided, in part, “...as ordered by the County U Court”. On or about Date 3, 2008, Company N complied with that request. During Month 1, 2009, Company N issued a Form 1099 to Taxpayer A reflecting the Date 3, 2008 distribution from IRA X to an account set up in the name of Trust T because an IRA cannot be set up and maintained in the name of a trust. This request for letter ruling was filed with the Internal Revenue Service (“Service”) shortly thereafter.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That, pursuant to section 408(d)(3)(l) of the Internal Revenue Code, the 60-day rollover period found at section 408(d)(3)(A) of the Code applicable to the distribution made on or about Date 3, 2008, from IRA X is waived; and
2. that Taxpayer A, is granted a period not to exceed 60 days as measured from the date of this ruling letter to roll over an amount not to exceed Amount U into an IRA.

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.

Code section 408(d)(3)(E) provides, in summary, that this paragraph does not apply to any amount required to be distributed in accordance with subsection (a)(6) or (b)(3) (Code section 401(a)(9) required distributions).

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.

Revenue Procedure 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 facts submitted in support of this ruling request indicate that, during calendar year 2008, Amount U was transferred from IRA X into an account set up and maintained in the name of Trust T. Company N, the financial institution which accomplished the transfer, correctly noted that an individual retirement account cannot be set up and maintained in the name of a trust, and appropriately issued a federal Form 1099 treating the Date 3, 2008 transfer as a taxable distribution.

The facts submitted in support of this ruling request indicate that Taxpayer A's financial advisor, acting on behalf of Taxpayer A, and on behalf of Trustee B, the trustee of Trust T, requested the IRA X distribution. The Service notes that although the financial advisor's instruction to Company N was based on a Court T order, a taxable event did occur as a result of the transfer and as a result of the actions of Taxpayer A's financial advisor.

Thus, under the facts outlined above, the Service, pursuant to Code section 408(d)(3)(I), waives the 60-day rollover period applicable to the Date 3, 2008 distribution from IRA X. Therefore, with respect to your ruling requests, the Service concludes as follows:

1. That, pursuant to section 408(d)(3)(I) of the Internal Revenue Code, the 60-day rollover period found at section 408(d)(3)(A) of the Code applicable to the distribution made on or about Date 3, 2008, from IRA X is waived; and
2. that Taxpayer A is granted a period not to exceed 60 days as measured from the date of this ruling letter to roll over an amount not to exceed Amount U into an IRA.

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code section 408(a) at all times relevant thereto.

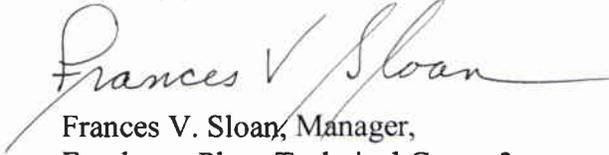
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

The original of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact me XXXXXX

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name and title.

Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

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