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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 29 2004

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =
Taxpayer B =
Company C =
Amount D =
Amount E =
Amount F =
Amount G =
Amount H =
Amount J =
Amount K =
IRA X =

Dear

This is in response to a ruling request submitted by you on ***** in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A maintained an individual retirement account (IRA X), with Company C. Taxpayer A is married to Taxpayer B.

Taxpayer A, age **, is suffering from the increasing effects of _____ sustained at age **. Taxpayer A sustained the _____ after being struck as a pedestrian by an automobile in a hit-and-run accident. Taxpayer A was in a _____ of _____

****. Upon his release from the hospital, Taxpayer A was unable to regain his multi-tasking abilities and was not able to pass a driving assessment to regain his driver's license. Although Taxpayer A had residual _____, he seemed to have retained those abilities necessary to continue to understand and transact his business affairs.

In time, Taxpayer A was able to handle the financial matters for he and his wife, including taxes, and he seemed to be handling such matters appropriately for years **** and ****. Towards the end of **** however, Taxpayer A experienced a change in his _____. On _____ without the knowledge of Taxpayer B, Taxpayer A inexplicably requested a distribution of Amount D from IRA X. Company C made the requested distribution of Amount D on _____. The Taxpayers received Amount D, in the form of a check, on _____. The required minimum distribution from IRA X was Amount E. Early in the year **** Taxpayer A requested and received Amount F in a distribution from IRA X. Amount F consisted of Amount E, the required minimum distribution from IRA X, plus an additional amount, Amount H. The Taxpayers received Form 1099-R for the year **** and the form reflected the total amounts withdrawn from IRA X for ****, Amount G.

When asked why he requested the distribution of Amount D from IRA X, Taxpayer A replied that he had no idea why he made the request and he could not account for his thought process in making the request. As a result of Taxpayer A's _____ in _____, Taxpayer B took over the financial affairs of the marriage. As a result of the unplanned additional income, the taxpayers paid an additional amount, Amount J, in federal taxes and Amount K in state income taxes with the amounts paid with their **** timely filed extensions.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X because the failure to waive such requirement would be against equity or good conscience. This would allow you to return Amount D to one or more IRAs restoring the tax deferred status of Amount D while not incurring the tax liability on the unplanned distribution of Amount D at this time.

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 or 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 or 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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, 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 indicates that Taxpayer A's deterioration resulting from his injuries he suffered in the hit and run accident. The facts and circumstances in this case indicate that Taxpayer A could not reasonably satisfy the requirement that Amount D be deposited in an IRA within 60 days of the distribution from his IRA.

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 D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, in cash, into one or more IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, this amount 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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact
 , ID , at

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter