

INTERNAL Revenue

200634050

Uniform Issue List: 408.03-00

MAY 23 2006

T: EP: RA

Legend:

Individual A =

Individual B =

IRA X =

Company M =

Amount C =

Dear :

This is in response to your request dated December 15, 2005, as supplemented by correspondence dated May 15, 2006, submitted on your behalf by your authorized representative, and a telephone conversation on May 16, 2006 with 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:

Individual A, age 82, asserts that his failure to accomplish a timely rollover of Amount C was caused by his deteriorating mental condition which impaired his ability to make financial decisions and prevented him from understand the nature of his action in withdrawing Amount C from IRA X. Individual A further asserts that Amount C has not been used.

Individual A is married to Individual B. Individual A and B file joint Federal income tax returns. Individual A maintained two accounts with Company M, an individual retirement arrangement (IRA), IRA X, and an individual account invested in a state tax-free bond fund which was not an IRA. Individual A has been diagnosed with a mental condition and has received medical treatment for cognitive disabilities since November 2001. Due

to this medical condition, Individual A must rely on Individual B for assistance with financial matters. Without Individual B's knowledge, on October 25, 2004, Individual A telephoned a Company M representative and directed that the total assets in IRA X be converted to an investment in a state tax-free bond fund. Pursuant to Individual A's instructions, Company M liquidated IRA X's entire account and transferred Amount C, the total account balance in IRA X, into Individual A's Company M personal non-IRA account. Individual A's mental condition impaired his ability to make financial decisions regarding IRA X's investments. Due to his mental condition, he did not understand that Amount C was being distributed to him in a taxable distribution.

On January 14, 2005, Company M issued Form 1099-R for _____ to Individual A. Individual A did not immediately disclose the receipt of this Form to Individual B. On March 21, 2005, Individuals A and B gave their certified public accountant (CPA) tax-related information, including the Form 1099-R from Company M, in conjunction with the preparation of their _____ Federal income tax return. The CPA contacted Individuals A and B on April 6, 2005 to inform them that they owed significant additional and unanticipated income taxes for _____ on account of the distribution from IRA X. It was at this point that Individual B first became aware of the distribution of Amount C from IRA X.

Based on the facts and representations, Individuals A and B request the following rulings:

1. Pursuant to section 408(d)(3) of the Code, the Internal Revenue Service waives the 60-day rollover requirement with respect to the entire erroneous distribution to Individual A from IRA X.
2. Individual A must receive required minimum distributions for the _____ and _____ years, based upon his age, pursuant to section 401(a)(9) of the Code.
3. Individual A is granted a period of 60 days from the date of the issuance of the requested ruling letter to contribute the amount of the erroneous distribution into a rollover IRA, provided, however, that all other requirements of section 408(d)(3) of the Code are otherwise satisfied (except the 60-day rollover requirement).
4. If the conditions in section 408(d)(3) of the Code (other than the 60-day rollover requirement) are satisfied, the amount of the _____ erroneous distribution will be considered a timely _____ rollover IRA contribution by Individual A within the meaning of section 408(d)(3).

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 one-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)(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 section 408(d)(3)(A) of the Code where 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) of the Code, 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 to such employee not later than the required beginning date. Section 401(a)(9)(C) defines term "required beginning date" as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½, or the calendar year in which the employee retires.

Section 408(a)(6) of the Code provides that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire IRA interest of an individual for whose benefit the IRA is maintained.

Section 408(d)(3)(E) of the Code sets forth the denial of rollover treatment for required minimum distributions from an IRA. Specifically, section 408(d)(3)(E) provides that rollover treatment shall not apply to any amount to the extent such amount is required to be distributed under section 408(a)(6), pertaining to IRAs.

The information presented and the documentation submitted is consistent with the assertion that the failure to accomplish a timely rollover was caused by Individual A's mental disability, which impaired his ability to make financial decisions and caused him to be unable to understand the consequences of his instructions to the Company M representative.

Therefore, we conclude with respect to requested rulings 1, 3 and 4 that pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C, less required minimum distributions for and . Individual A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C, less required minimum distributions for and , 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 contributions, the contribution of Amount C, less required minimum distributions for and , into one or more IRAs described in Code section 408(a) will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

With respect to ruling request 2, since Individual A is 82 years old and retired, he must receive required minimum distributions pursuant to section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) with respect to the and calendar years.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) with respect to the and calendar years.

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 expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 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.

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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 _____, I.D. # _____, at _____ (not a toll-free number). Please address all correspondence to _____.

Sincerely yours,



_____, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose