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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

NOV 10 2003

*T:EP:BA:TI*

Legend:

Taxpayer A.....

Hospital B.....

Hospital C.....

Physician M.....

Physician N.....

Amount P .....

Amount Q.....

Amount R.. .....

Company S .....

Company T.....

IRA X.....

IRA Y.....

Dear :

This is in response to a letter dated August 14, 2003, as supplemented by a letter dated October 29, 2003, in which your authorized representative requests, on your behalf, 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 were submitted under penalty of perjury in support of your request.

Taxpayer A began experiencing symptoms of mental depression with psychotic features early in 2002. Following the death of a close friend and fiancée of

Taxpayer A's daughter which had a severe impact on Taxpayer A's mental health, Taxpayer A was voluntarily admitted to the mental health ward of Hospital B on June , 2002. Both electro-convulsive therapy and anti-depressant medication were recommended at this time. On June , 2002, Taxpayer A discharged himself from Hospital B against medical advice. On September , 2002, Taxpayer A was admitted to Hospital C due to an overdose of blood pressure medication. On September , Physician M saw Taxpayer A for the first time for a psychiatric evaluation. Physician M noted that Taxpayer A's memory was impaired and that he had difficulty performing simple arithmetic. Physician M prescribed an anti-depressant for Taxpayer A and Taxpayer A was referred to another physician, Physician N, for out-patient psychotherapy. Unable to manage his affairs, Taxpayer A only saw Physician N four times rather than the recommended ongoing weekly visits, and there was some confusion with Taxpayer A's insurance company as to whether Taxpayer A had allowed his health insurance coverage to lapse. In Physician M's professional medical opinion, Taxpayer A became clinically psychiatrically ill in June or July of 2002.

The Social Security Administration ("SSA") has determined that Taxpayer A became disabled on June , 2002, and was entitled to disability benefits beginning December 2002, the date on which Taxpayer A had been disabled for a full five months which is a requirement for payment of such benefits. Because of Taxpayer A's disability, the SSA also selected Taxpayer A's spouse as the representative payee of Taxpayer A's disability benefits.

On or about September , 2002, Taxpayer A withdrew Amount P from his Individual Retirement Account with Company S ("IRA X"). Taxpayer A had not received and rolled over any amounts from an IRA in the one-year period ending on the date he withdrew Amount P from IRA X. On September , 2002, he deposited Amount P into a noninterest bearing checking account. This sum stayed in the noninterest bearing checking account until April , 2003, when Amount Q was transferred to Taxpayer A's IRA with Company T ("IRA Y"). The remaining amount of Amount P in Taxpayer A's checking account, Amount R, was also transferred to IRA Y, on August , 2003. Both of these transfers to IRA Y were made by Taxpayer A on the advice of counsel in the hope and anticipation that a waiver of the 60-day rollover requirement would be granted.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount P because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines IRA rollovers and provides the rules applicable thereto.

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if 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 60<sup>th</sup> day after the day on which the individual receives the payment or distribution.

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(l) provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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)(l).

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 Code section 408(d)(3)(l), 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 in this case indicates that Taxpayer A was not able to understand and manage his financial affairs when he withdrew Amount P from IRA X and thereafter. Due to Taxpayer A's disability, he could not reasonably satisfy the requirement that Amount P be deposited into another IRA within 60 days of the date of distribution. Taxpayer A did not utilize the funds and they were deposited into an IRA in less than a year of their withdrawal. The failure to roll over Amount P into another IRA within the 60-day period was beyond the reasonable control of Taxpayer A, and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to Code section 408(d)(3)(l), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount P. By

August , 2003, Amounts Q and R, totaling Amount P, were contributed to IRA Y. Provided all other requirements of section 408(d)(3) are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed pursuant to Code section 401(a)(9).

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

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

Pursuant to a Power of Attorney on file with this office, an original of this letter ruling has been sent to your authorized representative.

If you wish to inquire about this ruling, please contact

Sincerely yours,



Madan Dua, Acting Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling  
Notice 437

cc: