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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200953033

OCT - 5 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend

Taxpayer A:

Taxpayer B:

Financial Institution A:

Financial Institution M:

Financial Institution S:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Amount M :

Amount P:

Amount Q:

IRA X:

IRA Y:

IRA Z:

Account U:

Dr. :

Dear :

This is in response to your letters dated February 25, May 26, July 23, and July 27, 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.

Taxpayers A and B are married and file joint federal income tax returns. Taxpayer A maintained Individual Retirement Accounts (IRAs), IRA X and IRA Y, with Financial Institution A. Taxpayer A, age 78, asserts that on Date 1 Taxpayer A received distributions including Amounts M and P from IRA X and IRA Y, respectively. Taxpayer A asserts that his failure to accomplish a rollover of Amounts M and P within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mental condition which impaired his ability to make financial decisions and understand the consequences of his decisions.

Taxpayer B maintained an IRA, IRA Z, with Financial Institution A. Taxpayer B, age 69, asserts that on Date 1 she received a distribution of Amount Q from IRA Z. Taxpayer A asserts that her failure to accomplish a rollover of Amount Q within the 60-day period prescribed by section 408(d)(3) of the Code was due to her husband's hospitalization and her duties as a primary caregiver.

Taxpayer B's husband, who always made the financial decisions and handled the family finances including management of IRAs X, Y and Z, became concerned about the safety of their retirement accounts at Financial Institution A and instructed Taxpayer B to request that Financial Institution A close IRAs X ,Y ,and Z. On Date 1 Taxpayer A arranged for the closing of Taxpayer A's IRA X and Y and received a distribution of Amounts M and P, respectively, which were deposited on Date 2 into a non-IRA account at Financial Institution M with the intent to complete a future rollover into an IRA account.

On Date 1 Taxpayer B arranged for a the closing of Taxpayer B's IRA Z of Amount Q which was deposited on Date 3 into a non-IRA account at Financial

Institution S. Taxpayer B believed at the time of the deposit that she was completing a rollover of Amount Q to an IRA.

On Date 4, twenty eight days after the distribution of Amounts M, P and Q Taxpayer A's mental condition worsened and Taxpayer A was hospitalized for his condition. Documentation has been submitted from Dr. W, dated Date 5, which states that Taxpayer A had been hospitalized for a mental impairment during the 60-day rollover period and that Taxpayer A is clinically deteriorating rapidly.

Beginning on Date 4 and continuing throughout the remainder of the 60-day rollover period, Taxpayer B became the primary caregiver for her husband. As the primary caregiver Taxpayer B became responsible for the daily attention to her husband's care seven days per week for at least 5 hours per day.

Taxpayers A and B have not used Amounts M, P, and Q for any other purpose.

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

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)(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)(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)(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 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 Taxpayers A and B is consistent with their assertion that their failure to accomplish a rollover of

Amounts M, P, and Q within the 60 day period prescribed by section 408(d)(3) of the Code was due to a mental condition which impaired Taxpayer A's ability to make financial decisions and due to Taxpayer B's inability to complete a rollover because of her husband's hospitalization and her duties as a primary caregiver

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 to Taxpayer A of Amount M and P, and with respect to the distribution to Taxpayer B of Amount Q. Pursuant to this ruling letter, Taxpayers A and B are granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of Amounts M, P, and Q, respectively, to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

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.

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

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.

200953033

If you have any questions, please contact

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose