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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 28 2004

Uniform Issue List: 408.03-00

Legend:

- Taxpayer = *****

- Amount D = *****
- Company M = *****

- Company N = *****
- IRA W = *****

- IRA X = *****

- Checking
Account Y = *****
- Money Market
Account Z = *****

Dear *****:

This is in response to your letter dated *****, ***, as supplemented by additional correspondence and communications dated *****, **, ***, 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 by you under penalty of perjury in support of the ruling requested:

On *****, ****, the Taxpayer opened Individual Retirement Account ("IRA") W with Company M. IRA W was invested in a certificate of deposit (CD) with Company M for a three-year period expiring on *****, ****. On *****, ****, the Taxpayer received a check for Amount D, representing the balance to his credit in IRA W. On *****, ****, the Taxpayer deposited the Company M check in Checking Account Y with Company N. The intention was to re-invest this distribution from IRA W in another IRA CD account. On *****, ****, the Taxpayer transferred Amount D, from Checking Account Y to Money Market Account Z, an account he also maintained with Company M.

Shortly before the events described above occurred (on *****, ****), the Taxpayer's wife of 43 years died after a long illness. As represented by the Taxpayer, the deceased spouse was the one who handled all of the family's finances. The Taxpayer was trying to cope with not only with those finances, but also with his profound grief at her passing. Taxpayer A represents that, not being familiar with the 60-day rollover period, and trying to cope with funeral bills as well as other financial obligations, he neglected re-investing the IRA money within the 60-day rollover period.

On *****, ****, Taxpayer A opened a IRA self-directed account, IRA X, with Company M. However, when he attempted to transfer Amount D into the new IRA, he was informed by Company M that the transfer could not take place because the 60-day rollover period had expired. All of the money remains in Money Market Account Z.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D, because the failure to waive such requirement would be against equity or good conscience.

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) 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)(l) of the Code 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 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.

In this case, the information presented by the Taxpayer demonstrates that he was unable to complete the rollover of Amount D in a timely fashion because he was grieving over the death of his spouse, who had handled all the family finances, and because he was unfamiliar with the 60-day requirement of the rollover rules.

Accordingly, 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 is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into IRA X, or into another individual retirement account or annuity established for the purpose of receiving the rollover funds. Provided all other requirements of Code § 408(d)(3) except the 60-day requirement are met with respect to Amount D, then Amount D will be considered a rollover contribution within the meaning of section 408(d)(3).

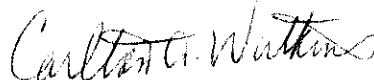
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code

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 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.

If you wish to inquire about this ruling, please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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