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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 22 2004

T:EP:RA:T4

Uniform Issue List: 408.03-00

Legend:

Individual A =

Individual B =

Individual C =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

Company I =

IRA W =

IRA X =

IRA Y =

IRA Z =

Dear :

This is in response to a request submitted by your authorized representative in a letter dated June 9, 2003, as supplemented by letters dated August 11, 2003, and January 12, 2004, for 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 B is the beneficiary of IRAs W, X, Y and Z established by Individual A. Individual A died on March Individual A and Individual B suffered from several serious medical conditions. For individual A, these included dementia and memory loss. Due to Individual A's inability to handle his financial affairs and Individual B's poor health and lack of knowledge and experience in any financial matters, Individual A's son, Individual C, became involved in their financial matters.

During August , Individual C became concerned with the performance of Individual A's professional financial advisor, and facilitated the movement of Amount H (the total of Amounts D, E, F and G) from IRAs W, X, Y and Z to a new financial advisor with Company I. The first financial advisor never informed Individual C or Company I that Amount H consisted of distributions from IRAs. Company I, not knowing that Amount H consisted of IRA distributions, invested Amount H in non-IRA accounts. The fact that investment accounts had been removed from IRAs to nonqualified plan investments, where they remain, was not discovered by Individuals A and B until April when their Form 1040 was being prepared by their tax preparer. At that time the 60-day rollover period had expired.

Based on the above facts and circumstances, you request that the Service waive the 60-day rollover requirement with respect to Amount H 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) 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)(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 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, 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; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates that Individual C, acting on behalf of Individual A, was not supplied with information by the financial advisors handling Individual A's investments that the investments were in IRAs. Thus, Individual A was prevented from depositing Amount H into an IRA within the 60-day time limit.

Pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount H (less the required distributions described below). Taxpayer B is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amounts H in cash (less the required distributions described below) to an IRA set up and maintained by Taxpayer B, provided all other requirements of section 408(d)(3) are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount H (less the required distributions described below) will be considered a rollover contribution within the meaning of section 408(d)(3).

It has been represented that Taxpayer A had attained age 70 ½ prior to calendar year 2002. Thus, Taxpayer A had a Code section 401(a)(9) required distribution for calendar year 2002. If said required distribution had not been taken prior to Taxpayer A's death, it must be taken and may not be rolled over into Taxpayer B's IRA.

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 ruling is directed only to the taxpayer that 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 please contact.......

Sincerely yours,

Donzell Littlejohn

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4