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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 18 2004

SE:TEP:PA:T3

Uniform Issue List: 408.03-00

Legend

Taxpayer A = ***
Taxpayer B = ***
IRA C = ***
Trust D = ***
Executor and Trustee E = ***
Financial Advisor F = ***
Investment Firm G= ***
Account H= ***
Accounting Firm I= ***
Amount J = ***

Dear ***:

This is in response to your letter dated March 19, 2004, in which you request, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A died on February 14, [REDACTED] at age [REDACTED]. Taxpayer A's estate contained IRA C that she had received from her spouse, Taxpayer B, who had predeceased her in [REDACTED]. The beneficiary of IRA C was Trust D. The beneficiaries of Trust D were Taxpayer A's three adult children. Executor and Trustee E was appointed the trustee of Trust D on May 31, [REDACTED] and the executor of Taxpayer A's estate on March 10, [REDACTED].

In March [REDACTED], Financial Advisor F, an employee and officer of Investment Firm G, instructed his assistant to transfer IRA C to Trust D. On April 4, [REDACTED], Financial Advisor F's assistant sent Executor and Trustee E several documents, which she had completed, requesting that he sign and return them. Included in the package of forms sent to Executor and Trustee E was Investment Firm G's IRA/IRRA/ROTH/SEP/SRA Distribution form. Executor and Trustee E signed each form and returned them to Investment Firm G as instructed. Upon receipt of the executed forms, Investment Firm G processed a transfer of Amount J from IRA C to Account H, a non-IRA account.

In late October [REDACTED], Executor and Trustee E contacted Accounting Firm I to request professional advice and assistance regarding the tax implications of the transfer of IRA C to Account H. Upon investigation, Accounting Firm I determined that the [REDACTED] Form 5498 for IRA C was using the EIN for Trust D thereby indicating it was already an asset of Trust D. More importantly, Accounting Firm I discovered that Executor and Trustee E unwittingly validated the transfer of assets when he signed the above referenced distribution form and that the rollover period prescribed under Code section 408(d)(3), if any, had expired.

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

With respect to your ruling request, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(C) of the Code denies rollover treatment for inherited IRAs. An IRA shall be treated as inherited if the individual for whose benefit the arrangement is maintained acquired such IRA by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

Section 408(d)(3)(D) of the Code provides a 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 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.

With respect to the ruling requested, Code section 408(d)(3)(I) and Rev. Proc. 2003-16 authorize the Service to extend the 60-day rollover period under certain circumstances. However, the Service may only grant an extension of time to accomplish a rollover where the distribution concerning which the extension is requested was eligible for rollover treatment. In this case, neither Trust D nor Taxpayer A's three children, the three beneficiaries of Trust D, was eligible to roll over into an IRA Amount J, the amount distributed from IRA C into Account H.

In short, the information presented by Executor and Trustee E demonstrates that IRA C became an inherited IRA (as defined in section 408(d)(3)(C)(ii)) with respect to Trust D

and Taxpayer A's three adult children upon Taxpayer A's death. Section 408(d)(3)(C)(i) of the Code denies rollover treatment for inherited IRAs.

Since Amount J was ineligible to be rolled over into an IRA, the 60-day rollover period never attached to Amount J. Thus, the Service cannot grant an extension of time to complete an action, which neither Trust D nor the three beneficiaries thereof could undertake.

Thus, with respect to your ruling request, we conclude as follows:


Since Trust D and the beneficiaries thereunder were ineligible to roll over Amount J, distributed from IRA C, into an individual retirement account, the Service cannot grant any period of time to accomplish said rollover of Amount J.

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 contact ***, ***, at ***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures: Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

cc: ***

