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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Uniform Issue List 408.00-00

Number: **200740020**
Release Date: 10/5/2007

JUL - 9 2007

T:EP:RA:T3

Legend:

Decedent A =

Individual B =

Company C =

Company D =

Date H =

Date I =

Date J =

Date K =

Date L =

Amount M =

Amount N =

Amount P =

State Q =

IRA X =

IRA Y =

Dear :

This is in response to a request dated October 12, 2006, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code") with respect to Decedent A. Correspondence dated January 19, 2007, April 17, 2007, and May 31, 2007, supplemented the request.

Under penalty of perjury, you have submitted the following facts and representations:

You represent that Decedent A, who was 80 years old at the time of his death, received distributions from IRA X and IRA Y totaling Amount P (Amount M plus Amount N). You assert that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made by Company C in failing to follow Decedent A's instructions, which led to Amounts M and N being placed into a non-IRA account. You further represent that Amounts M and N have remained in the non-IRA account and have not been used for any other purposes.

Decedent A maintained IRA X and IRA Y at Company C. Decedent A suffered from a medical condition which impaired his ability to make financial decisions and died in Date L, 2005. You are the executors of the estate of Decedent A. At the beginning of 2005, Decedent A was the owner of IRA X and IRA Y. Company C managed IRAs X and Y, as well as two non-IRA accounts for Decedent A.

On Date H, 2004, Decedent A and Individual B, his spouse, sent a written request to Company C to transfer all assets in kind (including IRA X and IRA Y) to Company D. However, Company C never complied with the request, and never transferred any of the accounts to Company D. On Date I, 2004, Decedent A and Individual B made a subsequent written request to Company C, but only for the transfer of the non-IRA accounts to Company D. Again, Company C did not comply with this request. On Date J, 2005, Decedent A sent another letter, again asking that Company C transfer only the non-IRA accounts to Company D. On Date K, 2005, Company C, contrary to Decedent A's instructions, transferred all of the accounts, including Amount M and Amount N from IRA X and IRA Y, respectively, and the non-IRA accounts to Company D. Decedent A never noticed the error in transferring Amount M and Amount N into a non-IRA account, due to his deteriorating medical condition. His subsequent death prevented him from correcting the error. You, as executor of the estate of Decedent A, now wish to roll over Amount M and Amount N to an Individual Retirement Arrangement.

You represent that under state law, you, as executors of the estate of Decedent A have the authority to establish a qualified rollover account on behalf of Decedent A.

Based on the foregoing, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amounts M and N from IRAs X and Y, and that amounts reported by Company C as taxable, will not be treated as taxable.

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)(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.

Section 401(a)(9) provides for required distributions from a qualified plan and section 408(a)(6) provides that similar rules shall apply to individual retirement accounts. After the employee dies, the timing of these required distributions depends on whether distributions had already begun, whether the account had a designated beneficiary, and whether the designated beneficiary is the decedent's spouse. Section 401(a)(9)(E) defines designated beneficiary for purposes of § 401(a)(9) as "any individual designated as a beneficiary by the employee." Section 1.401(a)(9)-4, Q&A-4, further provides that "[i]n order to be a designated beneficiary, an individual must be a beneficiary as of the date of death."

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 you is consistent with your assertion that Decedent A's failure to accomplish a timely rollover was caused by a mistake made by Company C, which led to Amounts M and N being placed into a non-IRA account.

Accordingly, based on the above, and subject to the restrictions noted below, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amounts M and N. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts M and N, less amounts described below, into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contributions of Amounts M and N will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

However, it is noted that the Service will not treat any beneficiary named by you, as executor, as a designated beneficiary under section 401(a)(9). Section 1.401(a)(9)-4, Q&A-4, provides that a designated beneficiary must be a beneficiary as of the date of death. Thus, for purposes of section 401(a)(9), the rollover IRA will have no designated beneficiary.

Finally, the scope of the executor's powers is a matter of state law. This ruling assumes that your actions in contributing amounts M and N into an IRA, set up in Decedent A's name, is in accordance with the laws of State Q and taken pursuant to your authority as executors.

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

This letter only authorizes the rollover of the amounts distributed from IRA X and IRA Y (Amounts M and N) and does not authorize the rollover of any interest attributable to such amounts.

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 that 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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (ID) at ( ) . Please address all correspondence to SE:T:EP:RA:T3.

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

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