200952065

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 29 2009

U.I.L. 408.03-00

xxxxx
xxxxx
xxxxx

SE:T:EP:RA:TY

Legend:

Taxpayer A = xxxxx

Taxpayer B = xxxxx

Individual D = xxxxx

IRA X = xxxxx

Financial Institution E = xxxxx

Financial Institution F = xxxxx

Real Property LLP = xxxxx

Amount N = xxxxx

Savings Account Y = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Year 1 = xxxxx

Year 2 = xxxxx

Year 3 = xxxxx

Dear xxxxx:

This is in response to your letter dated July 27, 2007, as supplemented by correspondence dated May 6, 2008, and August 25, 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 ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 72, represents that he received a distribution from IRA X totaling Amount N. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to Taxpayer A's mental condition which impaired his ability to make financial decisions and thus impaired his ability to accomplish a timely rollover. Taxpayer A further represents that Amount N has not been used for any other purpose.

Taxpayer A is married to Taxpayer B and owns a single self-directed traditional IRA ("IRA X"), which is administered by Financial Institution E. It is represented that IRA X consists of two assets: a cash account maintained at Bank F and a limited partnership interest in undeveloped land ("Real Property LLP").

Taxpayer A handled the couple's financial affairs until debilitation of his cognitive ability brought on by multiple strokes began to prevent him from continuing to do it. As a result, Taxpayer B, despite her lack of experience in financial affairs, became involved in handling the couple's investments.

In January of Year 1, Taxpayer B, consulted with Individual D, the couple's tax advisor, during which consultation Individual D brought up the need to take a required minimum distribution in the future. Taxpayer B misunderstood this to mean that a required minimum distribution had to be withdrawn from IRA X as soon as possible. Taxpayer B instructed Taxpayer A to make the appropriate withdrawal. Taxpayer A, without fully understanding the transaction, requested a withdrawal from IRA X and received a distribution check on Date 1 for Amount N, an amount representing approximately 73 percent of the balance of the cash portion of IRA X and approximately 28 percent of the total value of IRA X.

On Date 2, which was less than 60 days after Date 1, Taxpayer A deposited the check into Savings Account Y. Shortly after the expiration of the 60-day period following Date 1, the Taxpayers become aware that Taxpayer A was under no legal obligation to receive a required minimum distribution from IRA X for Year 1 but rather for Year 2, and that the deadline for Taxpayer A to commence receipt of such yearly distributions was not until April 1 of Year 3. In addition, they became aware that Amount N was approximately 8 times greater than the amount which would be required to be distributed from IRA X for Year 2. The

Taxpayers represent that the required minimum distribution that was due in Year 2 was only about 3.5 percent of the total value of IRA X.

Documentation, including a letter from Taxpayer A's doctor, shows that for the duration of the 60-day period after which Amount N was distributed and thereafter, Taxpayer A was incapable of making sound decisions pertaining to his finances.

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount N from IRA X.

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) of the Code.

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(d)(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) 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.

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)(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 Taxpayer A is consistent with his assertion that his failure to accomplish a rollover within the 60-day period was caused by his mental condition which impaired his ability to make financial decisions and thus impaired his ability to accomplish a timely rollover. 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 of Amount N from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N into an 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 amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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

This ruling assumes that IRA X satisfies the qualification requirements of section 408 of the Code at all times relevant to this transaction.

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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at xxxxx, or by fax at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

Laura B. Warshawsky

Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

cc: xxxxx
xxxxx
xxxxx

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose