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

201026039

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

***Uniform Issue List: 408.03-00***

SE:T:EP:RA:T2

APR 08 2010

**Legend:**

Taxpayer A = ***

Taxpayer B = ***

Financial Institution C = ***

IRA X = ***

IRA Y = ***

Amount A = ***

Amount B = ***

Date 1 = ***

Date 2 = ***

Year 1 = ***

State D = ***

Dear ***:

This is in response to your letter dated October 12, 2009, as supplemented by additional correspondence dated December 16, 2009, January 9, 2010, January

26, 2010, and March 22, 2010, 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 (the "Code").

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

Taxpayers A and B, who are married and file a joint tax return, represent that Taxpayer A received a distribution totaling Amount A from IRA X, and that Taxpayer B received a distribution totaling Amount B from IRA Y, both accounts being individual retirement annuities under section 408(b) of the Code. Taxpayers A and B assert that their failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) of the Code was due to Taxpayer A's medical condition and the medical condition of Taxpayer A's mentally disabled sister, for whom Taxpayers are the primary caretakers and for whom Taxpayer A is the legal guardian. Taxpayers further represent that Amounts A and B have not been used for any other purpose.

Taxpayers A and B both held certificates of deposit in their IRAs at Financial Institution C. When the certificates of deposit expired, they decided to move the funds from the IRAs at Financial Institution C to IRAs at a new financial institution in order to obtain a better rate of return. On Date 1, Taxpayer A went to Financial Institution C and took a distribution in the form of three checks for Amount A, the entire amount of IRA X. She also received a distribution for Amount B, the entire amount of Taxpayer B's IRA, IRA Y. Taxpayers have submitted documentation indicating that, after receiving the distributions of Amounts A and B, they researched on the internet IRAs at other financial institutions, met with representatives of at least one bank, and planned to conduct further research. Taxpayers represent, however, that their responsibilities caring for Taxpayer A's disabled sister placed them under considerable strain during the rollover period and caused them to miss the deadline for rolling over the IRA distributions.

Taxpayer A's sister, in addition to her mental disability, suffers from several physical conditions. The sister's health worsened in Year 1, causing her to undergo special testing during the rollover period in an attempt to bring her physical condition under control. Taxpayers A and B also received notification shortly before the rollover period began that State D planned to cut funding for the sister's services. Taxpayers represent that these events caused them tremendous stress and affected Taxpayer A's health. Taxpayers have provided documentation that after the rollover period, Taxpayer A sought medical attention for conditions relating to this stress.

Having been unable to select a new financial institution, Taxpayer A returned to Financial Institution C on Date 2, approximately two weeks after the 60-day deadline, to redeposit the distribution checks. Financial Institution C informed her that she had missed the rollover deadline. By letter dated Financial Institution C represents that Taxpayer A intended to deposit the checks into an IRA and that she never cashed the checks. All of the distribution checks remain in Taxpayers' possession.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amounts A and B.

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 $60^{th}$ 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 $60^{th}$ 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 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 (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) 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 (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 by Taxpayers A and B is consistent with their assertion that their failure to accomplish a timely rollover was due to Taxpayer A's medical condition and the medical condition of Taxpayer A's mentally disabled sister.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount A from IRA X and Amount B from IRA Y. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts A and B into rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amounts A and B will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This letter expresses no opinion as to whether the IRAs described herein satisfied the requirements of section 408 of the Code.

No opinion is expressed as to the tax treatment of the transactions 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 taxpayers 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 ruling is being sent to your authorized representative.

201026039

If you wish to inquire about this ruling, please contact ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

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

cc. ***