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

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 28 2011

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Estate G:

Taxpayer A:

Taxpayer B:

Date 1:

Amount M:

Amount N:

Financial Institution S:

IRA X:

Plan K:

Year 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Financial Institution C:

State O:

Date 7:

Amount P:

Amount Q:

Date 8:

Dear :

This is in response to your letters dated June 30, 2010, October 15, 2010, December 16, 2010, and February 3, 2011, on behalf of Estate G, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) and 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.

Taxpayer A asserts that Taxpayer B maintained an Individual Retirement Account (IRA), IRA X and Plan K both of which were maintained by Financial Institution S. Taxpayer A, the surviving spouse of Taxpayer B, age 60, asserts that on Date 1, Taxpayer B received a distribution of Amount M from IRA X and Amount N from Plan K. Taxpayer A asserts that Taxpayer B's failure to accomplish a rollover of Amounts M and N within the 60-day period prescribed by section 408(d)(3) of the Code was due to Taxpayer B's mental condition which impaired his ability to make financial decisions and his subsequent death.

During Year1 Taxpayer B was involved in the development and construction of a townhome subdivision, the financing of which was personally guaranteed by Taxpayers A and B. During Year 1 the townhome subdivision construction loan became past due. Taxpayer B became alarmed, fearing a collapse of the economy and a loss of his life savings.

On Date 1 Taxpayer B submitted instructions to Financial Institution S to cash out IRA X and Plan K. On Date 1 Financial Institution S issued a check for Amount M representing the proceeds of IRA X and a check in Amount N representing the proceeds of Plan K. On or about Date 3, Taxpayer B deposited Amount M and Amount N into a non-IRA account in his name at Financial Institution C. Taxpayer A was not aware of these transactions and first learned about the liquidation of IRA X and Plan K and her other joint accounts on Date 2.

After Taxpayer A discovered these transactions on Date 2, she immediately started the process of filing for a divorce and obtained a court order on Date 4 to restrain the financial institutions involved from honoring any checks written by Taxpayer B. Taxpayer A presented Financial Institution C and Financial Institution S with the Date 4 court order the day after the Date 3 deposits were made by Taxpayer B.

Taxpayer A made immediate demands on Financial Institution C to transfer the proceeds of IRA X and Plan K back into IRA X and Plan K or otherwise release the funds, however, Financial Institution C refused to release the funds. Several of the cashier checks from funds withdrawn from other accounts held jointly with Taxpayer A did not clear Financial Institution C because banks upon which those checks were drawn refused to honor them once presented with the court restraining order.

Taxpayer A asserts that prior to making the above described transactions, Taxpayer B had been suffering from a deteriorating mental condition which impaired his ability to conduct his financial affairs and which led to Taxpayer B's suicide on Date 5 which was within the 60-day rollover period for the distributions made from IRA X and Plan K

Documentation submitted shows that during the 60-day period Taxpayer B communicated with Taxpayer A via correspondence expressing remorse about the transactions and his desire to undo the transactions. After Taxpayer B's death, Taxpayer A was appointed by the Circuit Court of State O on Date 6 to be the duly appointed, qualified and acting personal representative of the will and estate of the deceased Taxpayer B.

Taxpayer A made immediate demands in her capacity as the personal representative of Taxpayer B on Financial Institution C to transfer the proceeds of IRA X and Plan K back into IRA X and Plan K. Financial Institution C refused to release Amounts M and N throughout the 60-day period despite repeated demands to do so by Taxpayer A.

On Date 7, a settlement was reached between Financial Institution C and Taxpayer A whereby Financial Institution C agreed to return Amount Q to IRA X and Amount P to Plan K. These transfers were completed on Date 8.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, contained in section 402(c)(3)(A) and section 408(d)(3) of the Code with respect to the distribution of Amounts M and P.

With respect to your request to waive to 60 day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs. Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) 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

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)(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)(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 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 section 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 "in order to be a designated beneficiary, an individual must be a beneficiary as of the date of death."

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 402(c)(3)(B), 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 provided by Taxpayer A is consistent with Taxpayer A's assertion that Taxpayer B's failure to accomplish a rollover of Amounts M and N within the 60-day period prescribed by section 402(c)(3)(A) and section 408(d)(3) of the Code was due to Taxpayer B's mental condition which impaired his ability to make financial decisions.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount Q or P, or any portion thereof, to an IRA. Provided all other requirements of section 402(c) and section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions

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 Q and P into an IRA, set up in Taxpayer B's name, is in accordance with the laws of State O and taken pursuant to your authority as executor.

This letter only authorizes the rollover of the amount distributed from IRA X and Plan K 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 which may be applicable thereto.

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

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

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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

cc: