COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201324022

Uniform Issue List: 408.03-00

MAR 22 2013

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T:EP:RA:T2

Legend:

Taxpayer A	=
Individual B	=
IRA X	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Financial Institution C	=

Dear XX:

This is in response to your request dated March 8, 2012, 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.

Taxpayer A represents that her spouse, Individual B, took a distribution of Amount 1 from Taxpayer A's IRA X without her knowledge or consent on January 5, 2009. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the fraudulent withdrawal of amounts in IRA X by Individual B without Taxpayer A's knowledge or consent.

In 2001, Taxpayer A wed Individual B, an attorney who worked as a business consultant for and was a partner at a certified public accounting firm. In 2004, Taxpayer A and Individual B completed powers of attorney documents as part of their estate planning. Taxpayer A was not represented by independent counsel and was not herself an attorney. Taxpayer A understood and intended that the power of attorney be valid for contexts in which she became incapacitated, disabled, or otherwise unable to make her own financial decisions. She did not understand nor intend to empower her husband, Individual B, to make all financial decisions on her behalf in the absence of her incapacitation or disability.

On January , 20 , Individual B took a distribution of Amount 1 from IRA X. Individual B asserted orally and in writing that he was acting in his capacity as Taxpayer A's power of attorney, to Financial Institution C and that he needed the distribution for Taxpayer A's medical expenses. Taxpayer A asserts that she did not need a distribution from IRA X for medical expenses, nor did she communicate any such need to Individual B. Individual B then gambled and lost Amount 1. In February 2010, Taxpayer A and members of her family confronted Individual B and he admitted to them that he had a gambling addiction. On February , 20 , Taxpayer A revoked the power of attorney that she had given to Individual B. In April 20 , Taxpayer A discovered that Individual B took the distribution of Amount 1.

Individual B has been diagnosed and treated for a gambling addiction. Taxpayer A provided substantial documentation of Individual B's gambling addiction, including a statement from a treating physician. Over a period of seven years, Individual B lost approximately Amount 4 while gambling.

In April 20 Taxpayer A was able to redeposit Amount 2 into IRA X.

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 distribution of Amount 1.

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 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.

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 Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by Individual B's fraudulent withdrawal of Amount 1 from IRA X without her knowledge or consent.

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 1 from IRA X. Taxpayer A is granted a period of 60-days from the issuance of this ruling letter to contribute Amount 3, the difference between Amount 1 and Amount 2, 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, Amount 3 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. Further, provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met the contribution of Amount 2, in April 20 into IRA X, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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

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 XXXXX . 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:
XXXXX
XXXXX
XXXXXX
XXXXXX