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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 15 2005

UIC: 9100.00-00

LEGEND:

SE:T:EP:RA:T3

Taxpayer A:

Taxpayer B:

Hospital D:

City E:

State F:

Hospital H:

City I:

State J:

Financial Advisor G:

Company S:

IRA X:

Amount 1:

Date 1:

Date 2:

Date 3:

Date 4:

Month 1:

Month 2:

Dear [REDACTED] :

This is in response to the [REDACTED] letter, as supplemented by additional correspondence, in which you, through your authorized representative, request an extension of the 60-day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code applicable to individual retirement accounts ("IRAs"). Your request is based on the following facts and representations.

Taxpayer A died on Date 2, 2004, survived by his spouse, Taxpayer B. On Date 1, 2004, Taxpayer A withdrew Amount 1 from his IRA X maintained with Company S in order to cover medical expenses pending receipt of insurance payments, including disability insurance payments. It has been represented that as of Date 3, 2004, which was approximately 27 days after Date 2, 2004, Taxpayer A had sufficient funds to replace Amount 1 in his IRA X. It has also been represented, and documentation has been submitted to the Internal Revenue Service ("Service") in support of said representation, that Taxpayer A advised his financial advisor, Financial Advisor G, that he intended to replace Amount 1 in his IRA X within the requisite 60-day period. Taxpayer B is the sole named beneficiary of Taxpayer A's IRA X.

The 60-day rollover period applicable to Taxpayer A's withdrawal of Amount 1 from his IRA X expired on Date 4, 2004.

It has been represented that Taxpayer A was diagnosed with esophageal cancer during Month 1, 2003, and initiated chemotherapy treatment for said cancer during the same month. It has also been represented that Taxpayer A began frequent hospitalization during Month 2, 2003. During the period Date 1, 2004, through Date 4, 2004 (the 60-day rollover period), Taxpayer A was admitted to various hospitals, including Hospital D in City E, State F, and Hospital H in City I, State J, for a total of 41 days of which at least 16 were for in-patient treatment. Additional hospital stays occurred after Date 4, 2004 and continued until Taxpayer A's Date 2, 2004 death. Date 2, 2004 was approximately 38 days after Date 4, 2004.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") with respect to the distribution of Amount 1

from IRA X because the failure to waive such requirement would be a hardship and against equity or good conscience.

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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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), 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 Taxpayer B on behalf of Taxpayer A demonstrates that the failure of Taxpayer A to make a rollover contribution to IRA X within 60 days of receiving Amount 1 was primarily, if not exclusively, due to Taxpayer A's deteriorating health. In this regard, the Service notes that Taxpayer A suffered from, and was frequently hospitalized for, esophageal cancer which hospitalization occurred during much of the 60-day rollover period applicable to the distribution of Amount 1. Furthermore, the Service notes that Taxpayer A died a few weeks after the 60-day rollover period had expired. The Service also notes Taxpayer A's intent and ability to effectuate a timely rollover (as shown by his having sufficient funds with which to make a timely rollover) if his health problems had not precluded his accomplishing such a timely rollover.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 1. Pursuant to this ruling letter, Taxpayer B, as the surviving spouse of Taxpayer A, and as the sole named beneficiary of Taxpayer A's IRA X, is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount no greater than Amount 1, except as noted below, to IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts required to be distributed, if any.

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 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 [REDACTED] (phone-not a toll-free number), or [REDACTED]. Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

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