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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

MAR 05 2004

Uniform Issue List: 408.03-00

Legend:
Individual A =

Bank B =

IRA X =

Amount D =

Amount E =

Amount F =

Date M =

Dear Individual A:

This letter is in response to your undated letter, received in our office May 22, 2003, requesting that we waive the 60-day rollover requirement of section 408(d)(3) of the Internal Revenue Code (Code). You supplemented your request with correspondence dated July 14, 2003 and October 24, 2003.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

Individual A's home suffered damage from tropical storm Gabriel requiring extensive structural repair and the complete removal of all portions of the interior infected with toxic mold. In addition, Individual A and A's spouse became ill from the effects of the toxic mold; A's spouse is still suffering from the effects of the mold.

Individual A maintained IRA X at Bank B. Individual A took a distribution from IRA X of Amount D on Date M during 2002. Individual A is under age 70 ½.

As a result of the effects of the illness, the extensive damage to the home, and the large cost of repair for which Individual A was not timely reimbursed by the insurance companies involved; Individual A did not redeposit Amount D into an IRA within 60 days of Date M. Eight months after Date M Individual A repaid 40% of Amount D to IRA X. Individual A made no rollovers from an IRA within the one year period prior to Date M. Individual A made no other withdrawal from an IRA during 2002.

Individual A requests a ruling that the Service waive the 60-day rollover requirement because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)(I) of the Code.

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)(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 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, 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; 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; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates extraordinary circumstances caused both by a natural disaster and subsequent illness, and indicates that the Individual A could not reasonably satisfy the requirement that Amount D be deposited in an IRA within 60 days of the distribution from IRA X. The failure to deposit Amount D into an IRA within the 60-day period was beyond the reasonable control of Individual A, and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to 40% of Amount D that has already been repaid to IRA X. With respect to the 60% of Amount D, the Service hereby waives the 60-day rollover requirement with respect to that 60% of Amount D that has not been repaid to IRA X pursuant to section 408(d)(3)(I) of the Code. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute 60% of Amount D in cash to an IRA, provided all other requirements of section 408(d)(3) of the Code are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount D will be considered a rollover with the meaning of section 408(d)(3) of the Code for the 2002 taxable year. All withdrawals by Individual A, in 2003, from any IRA that are within one year after Date M cannot be rolled over. The amount of any such withdrawals must be included in income for the 2003 taxable year.

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

If you have any questions please contact

Sincerely yours,

Donzel H. Littlejohn

Donzel H. Littlejohn, Manager
Employee Plans Technical Group 4