200949051

SEP 1 1 2009

Uniform issue List 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A

Individual A

Company A

Company B

IRA A

Account B

Amount A

Amount B

Amount C

Amount D

Amount E

Amount F

Dear

This letter is in response to a ruling request dated February 26, 2007, as supplemented by correspondence dated March 20, and December 14, 2007, May 22, and June 11, 2008, and September 1, 2009, submitted 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 ("Code").

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

Taxpayer A, at the time of distribution of Amount A from IRA A, suffered from various medical conditions. It is asserted that the failure of Taxpayer A to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her mental and physical conditions which impaired her ability to manage her financial affairs.

Taxpayer A's husband, a Certified Public Accountant, handled Taxpayer A's financial and tax affairs until his death in the year 2000. Because Taxpayer A was having difficulty handling her financial affairs since her husband's death, she utilized the services of the Certified Public Accountant who acquired her husband's practice. Eventually, Taxpayer A switched to Individual A, (who is a friend, neighbor, and Certified Public Accountant with an office close to Taxpayer A's home) for the handling of her financial affairs.

Taxpayer A had problems dealing with the Company A representative who handled her individual retirement account (IRA A). She became frustrated and agitated in her dealings with this person and initiated the distribution of the funds in IRA A (Amount A) without consulting anyone. The distribution of the funds took place as follows:

- On July 13, 200 , Amount A was distributed from IRA A and Amount B was deposited into Account B, a nonqualified account maintained with Company B. Simultaneously, Amount C was withheld for federal income taxes.
- Included in the distribution of Amount A was Amount D (the required minimum distribution from IRA A for the year 200).

When asked, Taxpayer A told a Company B representative that the money did not come from a retirement account but rather from stocks she had sold.

Some of the funds in Account B have been withdrawn and used to purchase an annuity, Certificate of Deposit, and to make a deposit to a money market account. All of the funds, however, remained in accounts that are not eligible to receive qualified rollover contributions.

Around mid-January 200 , during the preparation of Taxpayer A's 200 income tax return, Individual A inquired of Taxpayer A why she received Form 1099-R reflecting Amount A as a taxable distribution. Taxpayer A said she had no memory of making or authorizing withdrawals in July of 200 from IRA A or depositing the withdrawals into Account B. Taxpayer A thought the money was still in IRA A with Company A and asked Individual A if he would assist her in transferring the money to another company. However, Individual A discovered that Taxpayer A never sold investments outside of IRA A anywhere near the sum of Amount A. Individual A represented that Taxpayer A never owned investments outside of her IRA that equaled Amount A.

On April 12, 200 , Taxpayer A made a Katrina contribution of Amount E to an eligible retirement plan.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount F contained in section 408(d)(3) of the Code in this instance.

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)(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, 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 the documentation submitted on behalf of Taxpayer A is consistent with the assertion that the failure to accomplish a timely rollover was caused by Taxpayer A's mental and physical conditions which impaired her ability to manage her financial affairs.

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 F. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to roll over no more than Amount F (Amount A minus Amounts D and E) minus any required minimum distributions to an eligible retirement plan such as an IRA provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution. Provided no more than Amount F, minus any required minimum distributions, is contributed to an eligible retirement plan, such as an IRA, within 60 days from the issuance of this ruling letter, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

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 that may be applicable thereto.

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

This letter only applies to the taxpayer named above. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact at

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: