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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 0 3 2010

Uniform Issue List: 408.03-00

Legend:

Taxpayer A   =   * * *

IRA X   =   * * *

Amount 1   =   * * *

Annuity A   =   * * *

Bank A   =   * * *

Bank B   =   * * *

Bank C   =   * * *

Financial Specialist A =   * * *

Date 1   =   * * *

Dear * * *:

This is in response to a request submitted on your behalf by your authorized representative dated June 25, 2009, as supplemented by additional correspondence submitted on October 2, 2009 and November 2, 2009, 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, age   , represents that she received a distribution from IRA X totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to errors made by Financial Specialist A, which led to Amount 1 being placed in a non-IRA annuity and non-IRA accounts. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A maintained IRA X with Bank A. Taxpayer A is a   who, until   death in 20   , depended on   to handle the family's financial affairs. Taxpayer A asserts that   has no investment experience and that   did not know that IRA X was an individual retirement account within the meaning of section 408 of the Code.   claims that she thought the account was an ordinary savings account. maintains that   set up IRA X for her in 200   instructing   only to sign the application form where indicated.

Following   death, Taxpayer A went to Financial Specialist A for financial planning advice. Financial Specialist A advised Taxpayer A to close the IRA and reinvest the proceeds in an annuity contract, two certificates of deposit and   savings accounts in order to generate a greater rate of return. According to Taxpayer A, Financial Specialist A never told   that the proceeds had to be reinvested in an IRA. Nor did he explain the 60-day rollover requirement.

On Date 1, Taxpayer A withdrew Amount 1 from IRA X. Following Financial Specialist A's instructions, Taxpayer A agreed to reinvest a portion of the proceeds in an annuity contract. Financial Specialist A completed an application for a non-IRA annuity for which he was also the producer. Taxpayer A signed the application, which resulted in the issuance of Annuity A. A copy of the application form completed by Financial Specialist A was submitted with this ruling request and confirms Taxpayer A's assertions.

Following Financial Specialist A's instructions, Taxpayer A also reinvested the balance of the proceeds in two non-IRA certificates of deposit at Bank B, and her two existing non-IRA savings accounts at Bank A and Bank C, respectively. The amounts remain intact at the financial institutions where they were deposited.

Taxpayer A became aware of Financial Specialist A's erroneous advice in March, 20 when during the preparation of   20   tax return, her accountant identified the taxable distribution reported on Form 1099-R.

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

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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   assertion that   failure to accomplish a timely rollover was due to errors made by Financial Specialist A, upon whom   was relying for financial advice.

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 A 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 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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

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

If you wish to inquire about this ruling, please contact * * * (ID * * *) at * * *. Please address all correspondence to

Sincerely yours,

Donzell Littlejohn

Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

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

cc: * * *