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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201244022

AUG 10 2012

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A:

IRA X:

Amount M:

Amout N:

Insurance Company P:

Insurance Company I:

Financial Advisor C:

Annuity G:

Dear

This is in response to your request dated February 13, 2012, submitted on your behalf by your authorized representative, in which you request a ruling to waive 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 is a surviving spouse and owned the Individual Retirement Annuity (IRA), IRA X, established by her deceased spouse which was maintained by Insurance Company P. Taxpayer A represents that on September 24, 2007, she received a distribution from IRA X totaling Amount M. 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 errors made by Financial Advisor C, which led to Amount M being placed into a non-IRA annuity. Taxpayer A further represents that Amount M has not been used for any other purpose.

Financial Advisor C prepared the application to establish IRA X on July 20, 2004, for Taxpayer A's deceased spouse. Financial Advisor C also established other investments held with Insurance Company P for Taxpayer A's deceased spouse in the past. Taxpayer A depended on her deceased spouse to handle the family's financial affairs while he was alive. After his death on July 24, 2007, Taxpayer A relied on Financial Advisor C to handle the family's financial affairs.

On September 11, 2007, Taxpayer A met with Financial Advisor C to seek his advice for the investments held at Insurance Company P. Financial Advisor C recommended that the investments be redeemed and that Amount N of the proceeds be invested in an Insurance Company I annuity, Annuity G. He did not inform Taxpayer A that one of the investments to be redeemed was an IRA or that the 60-day rollover requirement applied to this transaction. On September 24, 2007, Financial Advisor C completed, and Taxpayer A signed, the forms to request the redemption of IRA X and other Insurance Company P non-IRA investments and the proceeds were deposited into a non-IRA account at Insurance Company P.

On October 18, 2007, Taxpayer A met with Financial Advisor C to sign the application for Annuity G. Financial Advisor C had Taxpayer A sign a blank application, which he completed after the meeting. On November 6, 2007, Taxpayer A withdrew Amount N from the non-IRA account at Insurance Company P to fund Annuity G.

Taxpayer A represents that she did not know that one of the Insurance Company P investments was an IRA and she did not become aware of this until she received a notice from the Internal Revenue Service (Service) in May of 2009.

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

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) of the Code, 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 errors committed by Financial Advisor C.

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 M from IRA X. Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to contribute Amount M to a Rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount M 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.

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

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 have any questions, please contact

Please address all

correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: