

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

200423037

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T.E.P.R.A. T4

[illegible]

Individual B = *****

Individual C = *****

IRA Annuity X = *****

Amount C = *****
\$***** (*****)

Bank D = *****

Court E = *****

This is in response to a request submitted on behalf of Individual B by her authorized representative by letter dated June 10, 2003, for a ruling to waive

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the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"). The request was supplemented with a letter dated March 1, 2004, from her authorized representative.

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

Individual B was married to Individual A for many years and they filed joint federal tax returns. Individual A attained age 70 ½ in and began taking distributions from his IRA until he transferred it to Individual B on October **, Individual B attained age 70 ½ in .

On or about July *, Individual B filed for a divorce from Individual A. A stipulation of settlement entered into between Individuals A and B dated April **, called for a transfer of portions of two of Individual A's individual retirement accounts held at Bank D, in the amount of \$*****, to Individual B. On or about July **, Individual A purchased IRA Annuity X with the funds from his Bank D individual retirement accounts, and designated the purchase as an "IRA rollover/transfer".

On or about June **, a Justice of Court E, a Court of competent jurisdiction, entered a domestic relations order directing that portions two of Individual A's individual retirement accounts held at Bank D, in the amount of \$*****, be transferred to Individual B. The two Bank D IRAs were the same as the IRAs mentioned in the settlement stipulation referenced above, and the two IRAs which proceeds were used to purchase IRA Annuity X.

On or about October **, Individual A executed a change of ownership form transferring the IRA Annuity X from himself to Individual B. It is represented this transfer was accomplished to satisfy the June **, Court E order and that it met the requirements of section 408(d)(6) of the Code and section 1.408-4(g) of the Income Tax Regulations (concerning transfer of account incident to a divorce).

In late Individual A's health began to fail, and on December ** Individual A executed a Durable General Power of Attorney in favor of Individual C, his son.

Individual C believed that IRA Annuity X belonged to Individual A, and on January *, , pursuant to the instructions of the insurance company, Individual B signed a cash surrender request with the insurance company which had issued IRA Annuity X. After deducting a surrender charge, the insurance company issued a check of Amount C to Individual C.

When Individual C requested a distribution from IRA Annuity X, he was not aware of the Court E domestic relations order dated June **, , or the request for change of ownership of the annuity contract dated October **,

No one at the insurance company advised Individual B or Individual C that the distribution was from an IRA annuity and taxable to Individual B.

Individual B and Individual C tried to return the funds to the insurance company in late January , but the insurance company would not accept the funds after the distribution check was cashed. Individual C returned the money to Individual B within the first few months of and most of the funds were invested with a broker in what appears to be a money market fund.

Individual B and Individual C first realized that the distribution from the IRA Annuity X was taxable when Individual B received Form 1099-R in . from the insurance company that held IRA Annuity X.

It was submitted that in January , no one at the insurance company advised Individual B or Individual C that the distribution was from an IRA Annuity and taxable to her. Individual C mistakenly caused the annuity to be cashed out believing it belonged to his father, Individual A. Individual B was born in a foreign country and never managed any financial affairs or prepared federal tax returns, and she relied on her son, Individual C, when signing the form authorizing the distribution of IRA Annuity X.

Individual B requests a waiver of the 60-day rollover requirement to allow her to deposit Amount C into an IRA rollover account in her name 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.

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With respect to the stipulation filed in the divorce court dated April **, and the June **, Court E order, section 408(d)(6) of the Code provides in part that the transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument is not to be considered a taxable transfer made by such individual, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse and not of such individual.

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

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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 (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

It is represented that the 1-year rollover limitation under section 408(d)(3)(B) of the Code is not applicable in your case.

Information presented demonstrates that a distribution was made from IRA Annuity X, an IRA annuity maintained in your name pursuant to a divorce action, with your consent which consent was obtained without your being advised by either the insurance company which issued IRA Annuity X or your son that the request to distribute the proceeds of IRA Annuity X would result in a taxable event with respect to you. Furthermore, you were not advised by either the insurance company or your son that you needed to roll over the IRA Annuity X proceeds within 60 days into another IRA in order to avoid the tax consequences. Finally, your son, Individual C, has indicated

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that he did not realize that IRA Annuity X was Individual B's but operated on the assumption it was the property of Individual A. His good-faith misunderstanding was the proximate cause of the events which gave rise to this ruling request.

Therefore, in response to your ruling request, pursuant to section 408(d)(3)(I) of the Code, except as noted below, the Service hereby waives the 60-day rollover requirement with respect to the distribution of IRA Annuity X of Amount C. You are granted a period of 60 days from the date of the issuance of this ruling letter to contribute Amount C (less the required distribution for 2003 described below), in cash, into another IRA. Provided all other requirements of section 408(d)(3) of the Code are satisfied, except the 60-day requirement with respect to such contribution, then this amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

It has been represented that Individual B attained age 70 ½ in . Thus, Individual B had a Code section 401(a)(9), as made applicable to an IRA Annuity pursuant to Code section 408(b)(3), required distribution with respect to calendar year 2003. Said calendar year required distribution may not be rolled over into an IRA, and is not included within the language of this ruling letter authorizing an extension of the 60-day rollover period. Also note that a required minimum distribution for the calendar year will be due on or before December 31,

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.

The original letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

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If you have any questions please contact *****, I.D. #**-*****, at
(**) ***_****.

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437