



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200852031

OCT - 2 2008

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

IRA X =

Date 1 =

Date 2 =

Date 3 =

Financial Representative Z =

Broker L =

Amount C =

Dear :

This is in response to letters dated April 29, 2008, and July 3, 2008, 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 83, asserts that on Date 3 he received a distribution from IRA X of Amount C, and that Taxpayer A's failure to accomplish a rollover of Amount C was due to the error of a representative of Broker L in providing incorrect advice and erroneously causing the distribution of Amount C. Taxpayer A asserts that Amount C has not been used for any other purpose.

In December , Taxpayer A was called by Financial Representative Z of Broker L to inform Taxpayer A that his required minimum distribution ("rmd") for had not yet been distributed. Financial Representative Z advised Taxpayer A that he needed to receive a distribution of Amount C from IRA X to meet the rmd requirements. Taxpayer A asserts he was aware of the rmd rule and relied upon Financial Representative Z to calculate the rmd amount. Amount C was distributed on Date 3. However, on Dates 1 and 2, Taxpayer A had already received distributions which were sufficient to satisfy Taxpayer A's year rmd from IRA X. Financial Representative Z did not notice the previous Date 1 and Date 2 distributions and erroneously caused Taxpayer A to receive Amount C. Taxpayer A did not discover this error until his accountant informed him of the error during the preparation of his year federal income tax return.

Broker L has issued a letter to Taxpayer A admitting the error of its representative in calculating Taxpayer A's rmd and in issuing the Date 3 distribution.

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 C, contained in section 408(d)(3) of the Code ("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)(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)(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) 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 Taxpayer A's assertion that on Date 3 he received a distribution from IRA X of Amount C, and that Taxpayer A's failure to accomplish a rollover of

Amount C was due to the error of a representative of Broker L in providing incorrect advice and erroneously causing the distribution of Amount 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 the Date 3 Amount C from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to the Date 3 Amount C to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

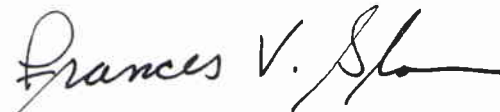
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 wish to inquire about this ruling, please contact
Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

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