



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

200907038

NOV 19 2008

Uniform Issue List: 408.03-00

SE:T:EP:RA:T4

LEGEND:

Taxpayer A = *****
IRA X = *****
Annuity Y = *****

Company C = *****
Company F = *****
Company N = *****
Bank S = *****
Individual T = *****
Amount D = *****
Amount E = *****
Amount F = *****
Date 1 = *****
Date 2 = *****

Dear :

This is in response to your request dated May 3 2007, as supplemented by correspondence dated April 18, and September 26, 2008, 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 (the "Code").

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

Taxpayer A, age 75, represents that prior to Date 1, he maintained an Individual Retirement Arrangement (IRA X) with Company F. He further represents that on Date 1, he requested Trustee-to-Trustee transfers of Amount E and Amount F. Amount F was successfully transferred in a direct rollover to Company N, but Amount E was placed in Annuity Y, a non-IRA annuity with Bank S. Taxpayer A asserts that his failure to accomplish a rollover of Amount E within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to the failure of Individual T, Company C, and Bank S to follow Taxpayer A's instructions, which led to Amount E being placed into Annuity Y, a non-IRA annuity. Amount E has not been used for any other purpose.

Taxpayer A represents that on Date 1, he hired Company C to coordinate a Trustee-to-Trustee transfer of Amount D from IRA X to one or more qualified IRA annuities. Individual

T, Managing Director of Company C, states that she completed applications for the transfers of Amount D into two different annuities. Amount F, was successfully transferred to an IRA annuity with Company N. However, because of communication errors between Company C and Bank S, Amount E was erroneously transferred to Annuity Y, a non-IRA annuity held by Bank S, where it currently remains. Individual T states that, although the application to Bank S identified the transaction as a "pending IRA rollover", Bank S failed to process the application per Taxpayer A's instructions and processed the transaction as a non-IRA tax-deferred annuity without informing either Company C or Individual T that it did not write IRA annuities. Taxpayer A did not learn of the error until Date 2, when Taxpayer A received a letter from Individual T apprising Taxpayer A of the error. Although Taxpayer A received a copy of Form-5498, IRA Contribution Information, from Company F, it incorrectly shows that Amount D was successfully rolled over in tax year 2004.

Based upon the foregoing facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount E from IRA X.

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 received 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 the time during the 1-year period ending in 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 included in gross income because of the application of section 408(d)(3).

200907038

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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 and documentation submitted by Taxpayer A is consistent with his assertion that he intended to rollover Amount E into an IRA to be maintained at Bank S. Taxpayer A failed to accomplish such a timely rollover because Individual T erred in depositing Amount E in Annuity Y, a non-IRA annuity with Bank S.

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 E from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount E to 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 E will be considered a valid 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 to Taxpayer A by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transactions 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.

200907038

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact *****, ID Number ***** at ***** . Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Donzell Littlejohn

Donzell Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose