



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200919069

FEB 10 2009

UIL No. 408.03-00

SET:EP:RA:T4

Legend:

Taxpayer A =

Individual B =

IRA X =

IRA Y =

IRA Z =

Account A =

Company R =

Company S =

Company T =

Financial Advisor C =

Individual D =

Amount A =

Amount B =

Amount C =

Date 1 =

200919069

Date 2 =

Dear :

This is in response to your letter dated September 9, 2008, supplemented by correspondence dated October 10, 2008, submitted on your behalf 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 83, represents that she received distributions of Amount A from IRA X, Amount B from IRA Y, and Amount C from IRA Z. Taxpayer A asserts that her failure to accomplish timely rollovers within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors committed by her financial advisor and her medical condition, which impaired her ability to accomplish timely rollover of Amounts A, B and C.

Taxpayer A represents that she was not aware that Individual B's annuities were IRAs. Taxpayer A further represents that on Date 1 she met with Financial Advisor C and his client associate, Individual D, who advised her to liquidate the annuities held by Company R. Financial Advisor C and Individual D did not advise Taxpayer A that the annuities were IRAs or that she had options other than liquidation. In addition, the forms that Taxpayer A completed did not contain any statement that the annuities were IRAs. Taxpayer A received Amounts A and B in connection with the liquidation of IRAs X and Y and deposited these amounts into Account A, a non-IRA account with Company T.

Taxpayer A represents that shortly before Date 2 she again met with Financial Advisor C and Individual D, who advised her to liquidate the annuity held by Company S. Financial Advisor C and Individual D assisted Taxpayer A in completing the appropriate forms to request liquidation of IRA Z. However, Financial Advisor C and Individual D did not advise Taxpayer A that the annuity was an IRA or that she had options other than liquidation. In addition, the forms that Taxpayer A completed did not contain any statement that the annuity was an IRA. On Date 2 Taxpayer A received Amount C in connection with the liquidation of IRA Z and deposited this amount into Account A.

Taxpayer A also represents that during the 60-day periods following the distributions she suffered from a medical condition that affected her memory and diminished her mental capacity. Thus, she relied on Financial Advisor C and Individual D to provide her with appropriate advice and assistance.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code, with respect to the distributions of Amounts A, B and C from IRAs X, Y and Z respectively.

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 60<sup>th</sup> 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 60<sup>th</sup> 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 one-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) does 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 and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish timely rollovers of Amounts A, B and C within the 60-day rollover periods was due to errors committed by her financial advisor and her medical condition, which impaired her ability to accomplish timely rollovers of Amounts A, B and 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 Amounts A, B and C from IRAs X, Y and Z. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amounts A, B and C into an eligible 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, Amounts A, B and C will be considered rollover contributions 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.

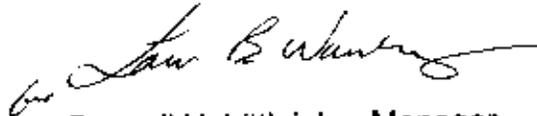
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact  
at (202) . Please address all correspondence to SE:T:EP:RA:T4.

200919069

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donzell H. Littlejohn".

Donzell H. Littlejohn, Manager  
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

CC: