



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200936047

JUN 09 2009

UIL No. 408.03-00

Legend:

T: EP: RA: TY

Taxpayer A =

Individual B =

Date 1 =

Investment Executive A =

Broker/Dealer A =

Financial Institution A =

Amount A =

IRA X =

Company A =

Annuity A =

Annuity B =

Dear:

This is in response to your letter dated June 6, 2008, as supplemented by correspondence dated June 20, 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 request:

Taxpayer A, age 85, represents that she received a distribution totaling Amount A from IRA X. 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 Investment Executive A's failure to properly instruct Financial institution A to issue an IRA annuity contract, resulting in Amount A being placed in Annuity A, a non-IRA annuity. Taxpayer A further represents that Amount A has not been used for any other purpose.

Individual B, the spouse of Taxpayer A, died on Date 1. Prior to his death, Individual B managed all of the household finances and maintained several investment accounts, including IRA X with Company A. Individual B also had a brokerage account with Broker/Dealer A. Investment Executive A is the account representative that worked with Individual B for many years prior to his death.

Taxpayer A asserts that she has no investment experience. Following Individual B's death, Investment Executive A approached Taxpayer A, asked to review her investments, and offered to assist her with transitioning Individual B's assets into her name. Taxpayer A accepted and completely relied upon Investment Executive A's experience. Among other assistance regarding Taxpayer A's financial matters, Investment Executive A processed the paperwork for the 2006 required minimum distribution from IRA X.

Taxpayer A also asserts that in August 2006, Investment Executive A approached her with a proposal to rollover IRA X to an IRA issued by Financial Institution A. Investment Executive A presented a hypothetical illustration comparing earnings, and advised Taxpayer A that an IRA with a fixed rate from Financial Institution A was better than the variable rate in IRA X. Based upon Investment Executive A's advice, Taxpayer A agreed to the rollover. Investment Executive A completed the application for the rollover, obtained Taxpayer A's signature, forwarded the application to Financial Institution A and mailed the contract directly to Taxpayer A.

Taxpayer A asserts that in August 2007, she contacted Investment Executive A to inquire about the required minimum distribution for tax year 2007. In the course of that investigation, it was determined that Investment Executive A improperly completed the application form which resulted in the issuance of a non-IRA annuity contract. A copy of the application form completed by Investment Executive A was submitted with this letter ruling request and confirms Taxpayer A's assertion.

In November 2007, Financial Institution A converted Annuity A to Annuity B, an IRA annuity.

Based upon the facts and representations, Taxpayer A requests 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 distribution of Amount A 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 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 her assertion that her failure to accomplish a timely rollover was due to Investment Executive A's failure to properly instruct Financial Institution A to issue an IRA annuity contract.

Therefore, pursuant to section 408(d)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Financial Institution A has already transferred Amount A from Annuity A, a non-IRA annuity, to Annuity B, an IRA annuity. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such transfer, Amount A 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.


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

200936047

If you wish to inquire about this ruling, please contact ****, I.D. No. ****, at (202) ****. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for 

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

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