



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200945077

AUG 12 2009

Uniform Issue Code: 408.03-00

T. EP. RA. J4

Legend:

Taxpayer A =

Insurance Company M =

Bank N =

IRA X =

Account Y =

Amount S =

Date 1 =

Date 2 =

Dear :

This is in response to your letter dated March 31, 2007, as supplemented by letters dated August 2008 and December 16, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A, age 61, represents that she received a distribution 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 the failure of Bank N employees to follow her instructions.

On Date 1, Taxpayer A received a distribution of Amount S from IRA X, which was maintained by Insurance Company M. Taxpayer A also maintained a non-IRA annuity with Insurance Company M from which she received a distribution. Taxpayer A had been dissatisfied with the customer service she received from Insurance Company M, whose representatives were located on the premises of Bank N. Following the advice of a financial advisor at Bank N, Taxpayer A decided to surrender the annuities held by Company M and reinvest them at Bank N. Taxpayer A further represents that she contacted the Company M agent but was met with delays including preparation of incorrect forms and failure to send in the paperwork as promised. After several weeks, the distributions were finally made. On Date 2, Taxpayer went to Bank N to complete the rollover of Amount S. Taxpayer A states that the financial advisors at Bank N had initiated the original discussion of her financial investments and she depended upon them to complete the IRA rollover portion of the transaction as originally discussed. Instead, Account Y, a non-IRA CD, was established, and both Amount S and the funds distributed from the non-IRA annuity were deposited in Account Y, less the amount of taxes withheld by Company M. Taxpayer A represents that Amount S remains in Account Y and has not been used for any other purpose.

Based on the above facts and representations, you request 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 S 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 account 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 he 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 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)(l) 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)(l) of the Code.

Revenue Procedure 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)(l) of the Code, 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 presented by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by the failure of Bank N to follow her original instructions to complete a rollover of Amount S.

Therefore, pursuant to section 408(c)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount S from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount S into an individual 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 S will be considered a rollover contribution within the meaning of section 408(d)(3) 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 ruling is directed solely to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact _____, SE:T:EP:RA:T4, I.D.
No. _____, at (_____) _____.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

- Deleted Copy of Ruling Letter
- Notice of Intention to Disclose