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TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

MAY 27 2010

Uniform Issue List: 402.00-00 and 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Plan D =

Financial Institution E =

Plan F =

Financial Institution G =

Account H =

Financial Institution I =

Financial Institution J =

Individual K =

Company L =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This letter is in response to a request for a letter ruling dated September 10, 2009, as supplemented by additional information dated April 6 and 14, 2010, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in sections 402(c)(3) and 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 requested:

Taxpayer A was age 57 at the time of the distributions of Amount 1 from IRA B, Amount 2 from Plan D and Amount 3 from Plan F (collectively, Amount 4). Taxpayer A asserts that her failure to accomplish a rollover of Amounts 1 and 2 within the 60-day period prescribed by sections 408(d)(3) and 402(c)(3), respectively, of the Code was due to her depressed condition following the death of her spouse which adversely impacted her ability to manage her financial affairs. In addition, Taxpayer A asserts that her failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 402(c)(3) was due to an error by a financial institution. Amount 4 remains in Account H and has not been used for any purpose.

Taxpayer A is the surviving spouse of Individual K, who maintained IRA B with Financial Institution C, an individual retirement annuity under section 408(b) of the Code and participated in Plans D and F, cash or deferred arrangements under section 401(k) of the Code with Financial Institutions E and G, respectively. Individual K died on December 1, 2008. As beneficiary of IRA B, Plan D and Plan F, Taxpayer A received distributions of Amount 1, Amount 2 and Amount 3 on December 29, 2008, December 22, 2008, and March 11, 2009, respectively.

On December 29, 2008, Amount 1 was transferred directly into a non-IRA account with Financial Institution C. On March 13, 2009, Amount 1 was deposited into Account H, a non-IRA account with Financial Institution I. On December 22, 2008, Taxpayer A received a check totaling Amount 2 which, was endorsed, on March 13, 2009, through Financial Institution J, into Account H with Financial Institution I. On March 11, 2009, Taxpayer A received a check totaling Amount 3 which was deposited on March 13, 2009, into Account H with Financial Institution I.

At the time of the distributions, Taxpayer A was under severe stress from the loss of her husband. She attempted to handle her deceased husband's estate and financial affairs. She does not recall the plan administrators advising her that she was eligible to roll over Amount 1 and 2 to an IRA. Her personal financial advisor at Financial Institution G had resigned and she was not familiar with her replacement. As a result, Taxpayer A did not know where to seek financial advice. In February of 2009, Taxpayer A's certified public accountant informed her of her eligibility to rollover Amounts 1 and 2 to an IRA. In March of 2009, Taxpayer A met with her new financial advisor to discuss the possible rollover of Amounts 1 and 2. However, she was informed she could not deposit Amounts 1 and 2 into an IRA because the 60-day rollover period had expired.

On March 11, 2009, Taxpayer A received a check totaling Amount 3 from Plan F. On March 13, 2009, she met with a financial consultant with Company L. The consultant concluded that since the 60-day rollover period for Amounts 1 and 2 had already expired, Amount 3 was ineligible to be rolled over. The ruling request is accompanied by a letter from Company L declaring they provided Taxpayer A with incorrect information regarding her eligibility to roll over Amount 3.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in sections 408(d)(3) and 402(c)(3) of the Code with respect to the distributions of Amount 4.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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$^{th}$ 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$^{th}$ 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

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.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) 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 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

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 sections 408(d)(3)(I) and 402(c)(3)(B) 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 presented and the documentation submitted by Taxpayer is consistent with her assertion that her failure to accomplish a timely rollover of Amount 4 was caused by the combined effects of her inability to manage her financial affairs following the death of her spouse and an error by a financial institution.

Therefore, pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B, Amount 2 from Plan D and Amount 3 from Plan F (Amount 4) and Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 4 into a rollover IRA. Provided all other requirements of sections 408(d)(3) and 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount 4 will be considered a rollover contribution within the meaning of sections 408(d)(3) and 402(c)(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 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 (I.D. # ), , at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

cc:

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437