



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201142031

JUL 25 2011

Uniform Issue List: 408.03-00

SE: T: EP: RA: T2

Legend:

Taxpayer A = * * *

IRA X = * * *

Amount 1 = * * *

Account X = * * *

Financial Institution A = * * *

Broker A = * * *

IRA Y = * * *

Date 1 = * * *

Date 2 = * * *

Date 3 = * * *

Employee A = * * *

Form A = * * *

Dear * * *:

201142031

This is in response to a request submitted on your behalf by your authorized representative dated June 25, 2010, as supplemented by additional correspondence submitted on October 13, 2010, October 20, 2010 and November 8, 2010, 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 65, represents that she received a distribution of Amount 1 from IRA X on Date 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to incomplete advice and instruction given to Taxpayer A by Financial Institution A. Taxpayer A also represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that she established IRA X at Financial Institution A in 2005 in order to receive the personal financial advice and assistance of Broker A, who was employed by Financial Institution A. Among Broker A's customary procedures with respect to total distributions from a terminated IRA was to have a check for the proceeds made payable to another IRA to ensure that the funds are deposited directly therein, and to avoid an inadvertent violation of the 60-day rollover requirement.

In early 2009, due to the downturn in the economy, the value of the investments in IRA X lost significant value. As such, Taxpayer X directed Financial Institution A to close IRA X in its entirety. Employee A, who is employed by Financial Institution A as Broker A's assistant, did not follow Broker A's customary procedures and completed Form A and forwarded it to Taxpayer A for signature. Form A directed that IRA X be liquidated and that a check for the proceeds thereof be sent to Taxpayer A. Taxpayer A signed Form A and returned it to Employee A for processing. On Date 1, Financial Institution A issued a check to Taxpayer A for Amount 1. On Date 2, Taxpayer A deposited Amount 1 in Account X, a non-IRA account.

Unbeknownst to Taxpayer A, Broker A was away from Financial Institution A during this period prior to Date 1. He returned to Financial Institution A on Date 1, at which time his employment was terminated. Due to his termination, he was contractually required to cease all communications with his now former clients. Therefore, Broker A was unable to provide the advice which Taxpayer A had expected from him, and Form A as prepared by Employee A, did not request that the check for the proceeds be made payable to IRA Y. In a copy of an e-mail from Broker A that was submitted with this ruling request, Broker A confirms the foregoing.

Taxpayer A became aware that Amount 1 was not timely rolled over to an IRA account in March, 2010 when during the preparation of her tax return for 2009, her accountant

identified the taxable distribution reported on Form 1099-R. On Date 3, she withdrew Amount 1 from Account A and wired Amount 1 to IRA Y.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount 1.

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 incomplete advice and instruction given to Taxpayer A by Financial Institution A, because of the termination of employment of Broker A, upon whom she was relying for financial advice and assistance.

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 1 from IRA X. 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 1 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 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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact * * * (ID * * *) at * * *. Please address all correspondence to * * *.

Sincerely yours,



Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

* * *

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Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: * * *