TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

FEB 08 2012

201218027

T:EP:RA:T1

Uniform Issue List: 408.03-00

Legend

Decedent =

Taxpayer A =

IRA Annuity B =

Annuity C =

Amount D =

Amount E =

Amount F =

Company L =

Company M =

Financial Advisor N =

Date 1 =

Dear :

In a letter dated July 5, 2011, as supplemented by correspondence dated December 23, 2011, you requested, through your authorized representative, 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 were submitted under penalty of perjury in support of your request for a waiver.

Taxpayer A represents that she received a total distribution of Amount D from IRA Annuity B. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code was due to a mistake by the offices of Financial Advisor N which used Amount E of Amount D to purchase a non-IRA annuity, Annuity C.

Taxpayer A is the surviving spouse of Decedent, whose date of death was Date 1. Decedent was over the age of 70 ½. Taxpayer A was the beneficiary of Decedent's IRA Annuity B maintained by Company L. Taxpayer A was also the beneficiary of certain life insurance proceeds. Taxpayer A is over the age 70 ½.

On September 16, 20 , Amount D was distributed from IRA Annuity B and placed in Taxpayer A's bank account. Life insurance proceeds equal to Amount F were also placed in Taxpayer A's bank account with Company M. On September 21, 20 , Taxpayer A wrote a check to Company L in Amount E. On September 10, 20 , Taxpayer A wrote a check to Company L equal to Amount F. A letter from Taxpayer A's Financial Advisor N states that it had been Taxpayer A's intention to roll over Amount E into an IRA but that due to an error, Amount E was commingled with Amount F and used to purchase Annuity C, a non-IRA annuity maintained with Company L. Taxpayer A first became aware of the mistake when she received a notice from the Service, dated April 25, 20 , stating that the total distribution of Amount D from IRA Annuity B was a taxable distribution. The IRA funds (Amount E) used in the purchase of non-IRA Annuity C are still in Annuity C and have not been used by Taxpayer A for any other purpose.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the rollover of Amount E of the distribution of Amount D from IRA Annuity B.

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 or 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, 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 she intended to roll over Amount E into an IRA but that due to a mistake by the offices of Financial Advisor N, Amount E was commingled with other funds and used to purchase a non-IRA annuity. Taxpayer A did not discover the mistake until she received a notice from the Service dated April 25, 2011, which was after the 60-day period prescribed by section 408(d)(3) of the Code.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the rollover of Amount E from the distribution of Amount D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount E will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of Code section 401(a)(9) minimum required distributions.

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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter

cc: