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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

JUN 19 2012

Uniform Issue List: 408.03-00

T.E.P. R.A. T.I

Legend:

Taxpayer A	=
Individual B	=
IRA C	=
Financial Institution D	=
Account E	=
Financial Institution F	=
Individual G	=
Financial Institution H	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated March 10, 2012, as supplemented by additional information dated April 24, and May 22, 2012, from 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 ("Code").

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

Taxpayer A, age 75, represents that she took a distribution of Amount 1 from IRA C. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to an error by Financial Institution F.

Taxpayer A was married to Individual B. Individual B maintained IRA C, an individual retirement annuity (IRA) under section 408(b) of the Code, with Financial Institution D. Individual B passed away on February 22, 2011. Soon after his death, Taxpayer A requested a distribution from IRA C as Individual B's beneficiary. On March 9, 2011, Taxpayer A met with Individual G, who had been Taxpayer A's and Individual B's financial advisor for 15 years. She showed him a check for Amount 1 which had been distributed from IRA C. Individual G noticed the check had been written by Financial Institution D, an insurance company. He concluded Amount 1 had to represent a life insurance death benefit. He failed to investigate the source of Amount 1. Per his advice, that her family investment accounts be consolidated, Taxpayer A deposited Amount 1 into Account E, a non-IRA account with Financial Institution F.

Taxpayer A represents she did not understand the tax consequences of this transaction. She relied on Individual G to recommend to her the most prudent way to invest Amount 1. Subsequent to the expiration of the 60-day rollover period for Amount 1, Taxpayer A reviewed Internal Revenue Service Publication 590, Individual Retirement Accounts, and discovered she could have elected to roll Individual B's IRA into an IRA in her own name. She communicated this to Individual G who told her he should have asked her some questions about the source of Amount 1. The ruling request is accompanied by a letter from Financial Institution H which admits that Individual G failed to exercise "due diligence" as Taxpayer A's financial advisor. Had he determined that Amount 1 had been distributed from Taxpayer B's IRA C, he would have advised her to deposit it into her own IRA as a spousal rollover.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code 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) 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<sup>th</sup> 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<sup>th</sup> 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)(C)(i) of the Code provides, in summary, that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

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 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 A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to her following the erroneous advice provided by Financial Institution F.

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 C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 1 back into an 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, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(b)(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,

*Coulton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

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

cc: