



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201240034

JUL 11 2012

T:EP:RA:T3

Uniform Issue List: 408.03-00

Legend:

Taxpayer A:

IRA X:

Amount M:

Financial Advisor S:

Company N:

Company J:

Account G:

Policy B:

Dear :

This is in response to your letters dated December 8, 2010, April 25, 2011, January 26, 2012, and February 10, 2012, in which you request a waiver of the 60-day IRA 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 74, asserts that on May 10, 2010, she received a distribution of Amount M from IRA X and that her failure to accomplish a rollover of Amount M

within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors on the part of her financial advisor.

Taxpayer A maintained an Individual Retirement Annuity (IRA), IRA X with Company N. During the first week of May 2010, Taxpayer A discussed with her financial advisor, Financial Advisor S, transferring the proceeds held in IRA X to a new IRA held with Company J. Taxpayer A and her spouse have been clients of Financial Advisor S for the last five years. After receiving confirmation from Taxpayer A to go ahead with the process, Financial Advisor S proceeded to fill out the Company J application on behalf of Taxpayer A.

On May 10, 2010, Taxpayer A received a distribution of Amount M from IRA X. Company N mailed the check directly to Taxpayer A to her home address. Taxpayer A deposited this check into her bank account, Account G. On May 17, 2010, Taxpayer A wrote a personal check from Account G to Company J for Amount M and delivered it to Financial Advisor S to place in an IRA with Company J in the name of Taxpayer A.

Financial Advisor S completed the Company J application on Taxpayer A's behalf, but he checked the box to set up the account submitted for Taxpayer A, as a non-qualified account by mistake.

Policy B, registered to Taxpayer A, was issued on May 28, 2010, as a non-IRA annuity. Financial Advisor S did not realize the mistake he made until reviewing accounts on December 15, 2010. Financial Advisor S immediately placed a call to Company J's service team on the same day and discussed the mistake that had been made. Company J could not change the plan type from non-qualified to a qualified IRA because the 60-day period had expired.

Based on the facts and representations, you request a ruling 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 M.

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

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) of the Code, the Internal Revenue 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 rollover of Amount

M within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error on the part of Financial Advisor S.

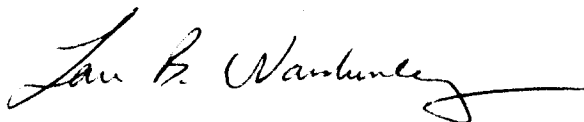
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Internal Revenue Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days from the date of the issuance of this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

If you have any questions, please contact XXXXXXXXXXXXXXXXXXXXXXXX by phone at XXXXXX or fax at

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose