INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00 200608036

NOV 29 2005

SE:T:EP:RA:T3

Legend:

IRA X =

Individual Y =

Amount A =

Bank B =

Bank C =

Amount D =

Dear [redacted]

This is in response to your request dated June 23, 2005, as supplemented by correspondence dated October 24 and November 7, 2005, submitted on your behalf by 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 (the "Code"). This correspondence was also supplemented by a telephone conference held on November 1, 2005.

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

You are 61 years old. From 1973 through 2003, you were employed as a secretary. You maintained an Individual Retirement Arrangement (IRA), IRA X, with Bank B, which was invested in a certificate of deposit. In March 2004, you engaged the services of a financial advisor, Individual Y, to assist with financial planning. You discussed IRA X with Individual Y and explained that it was invested in a certificate of deposit at Bank B, but you could not remember the maturity date. Individual Y advised you to consider a rollover of the IRA X balance into another IRA when the certificate of deposit matured. You agreed that you would roll over the IRA X balance into another IRA upon the maturation of the certificate of deposit. In addition, during this meeting you also discussed retirement income needs and the cash flow necessary to provide that income. One of the things that was discussed was an annuity. You discussed some of the features of an annuity with Individual Y, including tax-deferred growth, which were features that you had heard mentioned in the past about IRAs.

You received a letter, dated March 26, 2004, from Bank B informing you that the certificate of deposit which funded IRA X was about to mature. The letter asked if you wished to have a new certificate of deposit issued to fund IRA X or have some other action taken. In correspondence dated April 13, 2004, you informed Bank B that you wished to take a distribution of the balance of IRA X which you planned to roll over into an annuity. On April 20, 2004, Bank B issued a check to you for Amount A, which was a total distribution from IRA X. On May 10, 2004, you deposited Amount A into a checking account at Bank C.

On May 21, 2004, you met with Individual Y to discuss your financial plan. At that time, you had forgotten that Individual Y was not aware of the date that the IRA X certificate of deposit matured. You did not inform Individual Y that the certificate of deposit which had funded IRA X had matured and that you had received a total distribution of Amount A from IRA X. At this meeting, Individual Y suggested that you invest in an annuity and you wrote a check from your checking account at Bank C for Amount D to purchase this annuity. Amount D is more than Amount A. You mistakenly thought that the investment in the annuity was the same as rolling over the IRA X proceeds into another IRA and that the rollover had been successfully accomplished within the 60-day rollover period. Since it was your intent to roll over the IRA X distribution, you assumed that Individual Y had taken this into account in his recommendation for the annuity. You were not aware that the IRA X distribution could not be commingled with other funds in a rollover.

When Individual Y met with you regarding the filing of your [redacted] tax returns, you gave him the Form 1099-R for IRA X which indicated that you had received a distribution of Amount A from IRA X in [redacted] You commented to Individual Y that you had rolled the IRA X distribution over into an annuity and thought that the distribution was nontaxable. Due to a misunderstanding between you and Individual Y, you thought that the annuity was an IRA and was an eligible arrangement to receive the rollover of the IRA X distribution. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a misunderstanding between you and your financial advisor which led to Amount A being placed into a non-IRA annuity.

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 A, contained in section 408(d)(3) of the Code in this instance.

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 one-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)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where 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 (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 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 you presented and the documentation you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by a misunderstanding between you and Individual Y, your financial advisor. Since you had previously explained to Individual Y your ownership of IRA X, its funding by means of a maturing certificate of deposit, and your intent to roll the proceeds of IRA X into another IRA, you thought that the annuity which Individual Y established for you was a qualifying IRA. To accomplish your intended rollover, you wrote a check from your checking account where Amount A had been deposited to fund this annuity. However, due to a misunderstanding between you and Individual Y, your belief that the annuity was an IRA eligible to receive the rollover of the IRA X distribution was erroneous.

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 A. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A 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 expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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 . Please address all correspondence to .

Sincerely yours,

, Manager
Employee Plans Technical Group 3

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