TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

200909075

DEC 02 2008

Uniform Issue List: 408.03-00

T:EP:RA:VC

SSN:
Control Number:

Legend:

Taxpayer =

IRA A =

Financial Institution B =

Annuity C =

Financial Institution D =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated August 10, 2007, as supplemented by additional correspondence submitted by facsimile on November 28 and December 5, 2007, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 3 (Amount 1 – Amount 2) from your individual retirement account (IRA A) maintained with Financial Institution B.

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

Taxpayer, age 84 at the time of the distribution of Amount 1 from IRA A, represents that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to her reliance on the actions of Financial Institution B. Amount 2 was taken into income for the 20 taxable year as a required minimum distribution. Amount 3 was transferred from an IRA certificate of deposit (CD) in IRA A to a non-IRA annuity contract (Annuity C) with Financial Institution D. Amount 3 remains in Annuity C and has not been used for any purpose.

Taxpayer maintained IRA A, an individual retirement account under section 408(a) of the Code. Taxpayer represents that in September of 2003, she went to Financial Institution B to renew a CD in IRA A. She was referred to an employee of Financial Institution B, who recommended that Taxpayer convert the CD in IRA A to an annuity contract. Taxpayer signed an application form which she assumed was for an IRA annuity contract. The form does indicate it can be used for both IRA and non-IRA investments. At no time did she understand that she would be taxed on the IRA distribution because she was reinvesting the funds in the annuity. She represents that she relied on the employee's professional advice and followed his recommendation. Taxpayer further represents that the employee either overlooked the fact that the CD was an IRA or did not understand the consequences of the transfer to Annuity C. Taxpayer moved, and Form 1099R was probably not forwarded to her new address. She was advised by an AARP employee who assisted her with her tax return that because her income was below a certain amount, she was not required to file a tax return for the years in question. Financial Institution B has acknowledged in writing that the actions of its employee may have caused the distribution from Taxpayer's IRA.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of Amount 3.

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 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^{th} 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)(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 the documentation submitted by Taxpayer is consistent with Taxpayer's assertion that Taxpayer's failure to accomplish a timely rollover of Amount 3 was due to Taxpayer's reliance on an employee of Financial Institution B, whose actions mistakenly resulted in the transfer of Amount 3 into Annuity C, a non-IRA annuity contract.

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

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 ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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.

The original 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 , SE:T:EP:RA:T1, (I.D.), at .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

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

cc: