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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 30 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

IRA D =

IRA E =

Financial Institution F =

Individual H =

Account I =

Account J =

Account K =

IRA L =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Amount 7 =

Amount 8 =

Dear :

This letter is in response to a request for a letter ruling dated April 3, 2007, as supplemented by additional information dated September 5, and November 29, 2007, February 11, and 25, 2008, and March 3, 2009, 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 distributions of Amounts 1, 2, and 3 from your deceased spouse's individual retirement annuities (IRAs C, D, and E, respectively) maintained with Financial Institution F.

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

Taxpayer A, age 73 at the time of the distribution of Amounts 1, 2, and 3 (Amount 4) from IRAs C, D, and E, respectively, represents that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her reliance on the actions of Individual H, her late husband's life insurance agent and financial advisor. Amount 4 was deposited by Taxpayer A into Account I, a non-IRA account. Except for required minimum distributions under section 408(a)(6) of the Code, the balance in Account I has not been used for any purpose.

Taxpayer B maintained IRAs C, D, and E, three individual retirement annuities under section 408(b) of the Code. Taxpayer A represents that Taxpayer B named Taxpayer A, his surviving spouse, as the beneficiary of the three IRAs. Taxpayer B passed away on June 18, , resulting in Taxpayer A being in mourning for a lengthy period. Taxpayer B handled all financial planning matters for himself and Taxpayer A. In January , Individual H, who sold IRAs C, D, and E to Taxpayer B, advised Taxpayer A that she was entitled to a death benefit from the three IRAs. He asked Taxpayer A to sign some papers so that he could process the claim. He never informed Taxpayer A that: 1) receipt of the distribution was a taxable event; or 2) such distribution was eligible for rollover to an IRA in Taxpayer A's name. Taxpayer A, who knew little about investments, insurance, retirement plans, and associated tax matters, relied on Individual H to handle her financial affairs in a prudent manner. Taxpayer A assumed that if there were any adverse tax consequences and, furthermore, a way to avoid them, Individual H would provide appropriate guidance. By affidavit dated September 3, Individual H acknowledged that he failed to advise Taxpayer A of the tax consequences and rollover procedures for the distribution of Amount 4.

On February 23, Taxpayer A signed the required forms to generate distributions of Amounts 1, 2, and 3 from IRAs C, D, and E, respectively. This Claimant Statement was received by Financial Institution F on March 1, Taxpayer A received a check totaling Amount 4 which, on May 4, she deposited into her personal checking account (Account I). A few days after Taxpayer A deposited Amount 4 in Account I, Individual H advised her that it should be invested in a 15-year deferred annuity. Taxpayer A was not interested because of her age. On May 24, Taxpayer A transferred Amount 5 to Account K which was set up for the purpose of receiving life insurance and other death benefits resulting from Taxpayer B's death. In addition, during June of she transferred Amount 6 to her personal investment account (Account J). On December 27, Taxpayer A transferred Amount 7 from Account J to IRA L which was a rollover IRA. In December, Taxpayer A's accountant informed her that Amount 4 was eligible for rollover to an IRA.

The total amount of the distributions from IRAs C, D, and E (Amount 4) less the amount rolled over to IRA L (Amount 7) equals Amount 8.

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 7 and Amount 8.

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 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) 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)(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) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

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) 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 4 was due to her reliance on Individual H, whose actions mistakenly resulted in the deposit of Amount 4 into Account I, a non-IRA account. A portion of Amount 4 (Amount 7) has already been rolled over into an IRA. Since the distributions from IRAs C, D, and E, Taxpayer A has always maintained sufficient funds in Accounts I, J, and K which could be used to complete a rollover of Amount 8.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount 7 and Amount 8 (less any required minimum distributions under section 408(a)(6) of the Code for all applicable tax years) from IRAs C, D, and E. Taxpayer A is granted a period of 60 days from the issuance of this letter to contribute Amount 8 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, Amounts 7 and 8 will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This letter expresses no opinion as to whether the IRAs described herein satisfied the requirements of section 408 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,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

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

cc: