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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 20 2009

Uniform Issue Code: 408.03-00

SE: T: EP: RA: T4

Legend:

Taxpayer A =

Individual B =

Bank N =

IRA X =

Account Y =

Amount S =

Amount T=

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Dear :

This is in response to your letter dated July 9, 2007, as supplemented by correspondence dated July 28, 2008 and July 5, 2009, 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 ("Code").

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

Taxpayer A, age 76, represents that she received a distribution from IRA X. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by a Bank N employee.

In a letter dated Date 1, Bank N informed Taxpayer A that IRA X, a time deposit account with a very low interest rate, was maturing within a few weeks. On Date 2, Taxpayer A went to Bank N to renew her investment as she had done every other time an IRA investment matured. The balance in IRA X was Amount S. An employee of Bank N encouraged Taxpayer A to transfer her money into a certificate of deposit (CD) that would earn a higher rate of interest. Taxpayer A agreed to close the old account and open a new one, intending to effect a rollover of Amount S. The Bank N employee then provided forms, which Taxpayer A signed, thinking that she was investing Amount S in an IRA CD. However, the transaction set up by the Bank N employee was not a rollover and it resulted in IRA X being closed and Amount S being placed in Account Y, a non-IRA CD. The error was discovered on Date 3, during preparation of Taxpayer A's tax return for Year 1. In a letter of explanation dated Date 4, Individual B, a Consumer Market Executive of Bank N acknowledged that the error was likely the result of miscommunication between Taxpayer A and the employee of Bank N. Taxpayer A represents that Amount S remains in Account Y and has not been used for any other purpose.

Based on the above facts and representations, you request 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 S from IRA X.

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 account 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 he 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 if 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)(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.

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 and documentation presented by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error committed by an employee of Bank N.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount S from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount T (Amount S less the amount of Taxpayer A's required minimum distribution for Year 1) 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 contribution, Amount T will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 ruling is directed solely to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others 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 , SE:T:EP:RA:T4, I.D. No. , at (202) - .

Sincerely yours,

Donzell H. Littlejohn

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: