201003032

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 29 2009

U.I.L. 408.03-00

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xxxxx
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SE:T:EP:RA:T4

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Financial Institution C = xxxxx

Financial Institution D = xxxxx

Amount N = xxxxx

Amount O = xxxxx

Bank E = xxxxx

Account Y = xxxxx

Year 1 = xxxxx

Year 6 = xxxxx

Date 1 = xxxxx

Year 7 = xxxxx

Dear xxxxx:

This is in response to your letter received May 19, 2009, as supplemented by correspondence dated June 24, and August 3, 2009, 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 are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 77, represents that she received a distribution totaling Amount N from an individual retirement annuity (IRA X) maintained by Financial Institution D, and that she intended to roll over Amount N to another IRA to be established at Bank E. Taxpayer A asserts that her failure to accomplish a rollover of Amount N within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Bank E to carry out her instructions, and that as a result of a language barrier affecting Taxpayer A's ability to read and comprehend in English, Taxpayer A failed to notice Bank E's error until after the expiration of the 60-day period. Amount N has not been used for any purpose.

It is represented that Taxpayer A relocated to the United States as an adult, that English is her second language and that she does not read or comprehend as well in English as she does in her own language.

Taxpayer A maintained her IRA savings for many years in Certificates of Deposit without incident and upon attaining age 70 ½ began receiving required minimum distributions.

It is represented that in Year 1 Taxpayer A was persuaded by financial personnel to switch all of her IRA investments from Certificates of Deposit to IRA X, an IRA annuity, in order to obtain a better rate of return. Initially, Taxpayer A received periodic financial statements from Financial Institution C. After Financial Institution D acquired Financial Institution C, she received statements from Financial Institution D. Taxpayer A represents that, although documents from Financial Institution C and subsequently Financial Institution D show that monthly withdrawals were made from IRA X, she received one check per year at the end of each calendar year and such check was distributed to her each year without her making a request.

It is represented that in Year 6 on Date 1, Taxpayer A received a check from Financial Institution D in the mail for Amount O, which was Amount N less required withholding. Amount N was a distribution of the total surrender value of IRA X. On Date 1, the same date Taxpayer A received the check for Amount N, she went, unaccompanied, to Bank E. When she presented the check for Amount N to Bank E Taxpayer A also presented proceeds from a non-IRA Certificate of Deposit which had matured. Taxpayer A represents that she told the teller the check was IRA money. However, Bank E established Account Y, a non-IRA Certificate of Deposit, for the benefit of Taxpayer A in which both the distribution from IRA X and the proceeds of the matured non-IRA Certificate of Deposit were deposited. Taxpayer A represents that as a result of her difficulty with English she failed to recognize that the correct transaction had not been completed.

In Year 7, while preparing Taxpayer A's income tax return(s) for Year 6, Taxpayer A's son-in-law discovered that Taxpayer A had received a total distribution from IRA X in Year 6, instead of only the required minimum distribution. It was at that time, more than 60 days after the date Taxpayer A had received the check for Amount O from Financial Institution D, that Taxpayer A first became aware that the Certificate of Deposit Bank E had established on her behalf on Date 1 was a non-IRA Certificate of Deposit.

Based on the facts and representations presented herein, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount N 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) 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) 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).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, 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.

Taxpayer A has stated that she gave instructions to Bank E which, if followed, would have resulted in the timely rollover of IRA X. Taxpayer A has not submitted documentation that shows that Taxpayer A communicated clearly to Bank E that Amount O was to be treated differently from the non-IRA CD proceeds she presented during the same bank visit, and that Amount O was to be deposited into an IRA. To the contrary, IRA X proceeds and non-IRA funds were commingled in the same non-IRA account rather than two separate accounts being established.

Accordingly, Taxpayer A has not shown that the failure to complete a timely rollover of IRA X was the result of any error on the part of a financial institution. Taxpayer A also has not shown that any of the other factors described in Rev. Proc. 2003-16 caused her to fail to complete the rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount N from IRA X.

This ruling assumes that IRA X satisfies the qualification requirements of section 408 of the Code at all times relevant to this transaction.

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 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 xxxxx, I.D. # xxxxx, by telephone at xxxxx. Please address all correspondence to

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

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

cc: xxxxx
xxxxx
xxxxx