TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.03-00

JUN - 9 2010

SE:T:EP:RA:T3

Legend:

Taxpayer A:

Annuity X:

Company G:

Financial Institution C:

Financial Institution B:

Financial Institution D:

Financial Advisor M:

Company E:

Amount L:

Amount Y:

Amount Z:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Year 1:

Account Y:

Account Z:

Dear :

This is in response to your letters dated March 16, 2009, January 6, 2010, February 16, 2010, April 15, 2010, and May 13, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the Code).

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

Taxpayer A, age 62, was the owner of a variable rate annuity, Annuity X, an Individual Retirement Account (IRA), maintained by Company G. Taxpayer A asserts that on Date 3, he received a distribution from Annuity X in the form of a check for Amount L, payable to Taxpayer A. Taxpayer A asserts that his failure to accomplish a rollover of Amount L within the 60 day period prescribed by section 408(d)(3) of the Code was due to the error of his financial advisor.

Taxpayer A retired from Company E on Date 1. Taxpayer A was directed to Financial Institution C on the recommendation of his union. Financial Institution C assigned Financial Advisor M to assist Taxpayer A. Financial Institution C initiated the establishment of Annuity X on behalf of Taxpayer A. Taxpayer A met with Financial Advisor M approximately twice a year to review Taxpayer A's finances including his retirement funds. As a result, Taxpayer A relied on Financial Advisor M for financial advice.

During Year 1, Taxpayer A became concerned about the declining value of Annuity X. Taxpayer A met with Financial Advisor M on Date 2 and informed him that he wished to withdraw his funds because he wanted to invest in a safer investment. Financial Advisor M prepared three documents for Taxpayer A's signature. Financial Advisor M failed to inform Taxpayer A of the tax ramifications of the withdrawal and of the 60 day rollover requirement.

On Date 3 Taxpayer A picked up the Amount L check representing a total distribution of Annuity X.

On Date 4, two days after Date 3, Taxpayer A opened Account Y, a certificate of deposit, with Financial Institution B into which Taxpayer A deposited Amount Y.

On Date 5, five days after Date 3, Taxpayer A opened Account Z, a certificate of deposit, with Financial Institution D into which Taxpayer deposited Amount Z. Amount Y and Amount Z equal Amount L.

Taxpayer A first learned that Annuity X was an IRA and that he missed the 60-day rollover period when he received his Year 1, Form 1099-R.

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 Amounts M an N contained in section 408(d)(3) of the Code ("the Code").

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)(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)(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 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) 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 documentation submitted by Taxpayer A is consistent with the assertion made that his failure to accomplish a rollover of Amount L within the 60-day period prescribed by section 408(d)(3) of the Code was due to the error of his financial advisor who had been advising Taxpayer A on his financial affairs for a number of years and whom Taxpayer A, as a result, relied upon for correct advice.

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 to Taxpayer A of Amount L. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount L to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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.

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.

If you wish to inquire about this ruling, please contact

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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