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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 19 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

Individual B =

IRA C =

Financial Institution D =

IRA E =

Financial Institution F =

Account G =

IRA H =

Individual I =

Individual J =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Dear :

This letter is in response to a request for a letter ruling dated May 24, 2011, as supplemented by additional correspondence dated September 1, October 2, and December 29, 2011, and February 5, 2012, from your authorized representative, in which you have requested 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 requested:

Taxpayer A, age 73, represents that she took distributions of Amount 1 from IRA C and Amount 2 from IRA H. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to several instances of miscommunication between herself and Financial Institution F.

Taxpayer A was married to Individual B. Individual B maintained IRA C and IRA E, individual retirement accounts (IRAs) under section 408 of the Code, with Financial Institutions D and F, respectively. Individual B passed away on March 11, 2008. A few weeks later, Taxpayer A called Individual I, a branch manager at Financial Institution F, to discuss the status of her deceased husband's IRA accounts. She was going to be receiving a death beneficiary check from IRA C and wondered what she should do with it. Initially, Taxpayer A considered this beneficiary check to be more like the payment of life insurance proceeds. Individual I recommended that Taxpayer A delay at least until she received the beneficiary check from IRA C before making any financial decisions.

On February 10, 2009, Taxpayer A received a check (totaling Amount 6), dated February 3, 2009, for funds distributed from IRA C. Financial Institution D reported a distribution of Amount 1 on Form 1099-R. The check included earnings of Amount 5, which accrued during the distribution process. She immediately called Individual I to discuss Individual B's IRAs. Individual I arranged for Taxpayer A to meet Individual J, an investment counselor with the financial services department of Financial Institution F, who was a paid consultant but not an employee. The meeting occurred on February 25, 2009 and included a discussion in which Individual J suggested that Taxpayer A could achieve her objective of maintaining liquidity in the funds coming from IRA C and IRA E if she invested these funds in certificates of deposit (CD). On February 27, 2009, Taxpayer A deposited the distribution check from IRA C (totaling Amount 6) into Account G, a non IRA account maintained with Financial Institution F. Soon after this deposit, she used Amount 3 to purchase a CD.

Also, in her dealings with Financial Institution F concerning the disposition of her deceased spouse's IRA E, Taxpayer A indicated that she wanted her husband's name removed from IRA E and her name substituted as it was her desire to establish a spousal IRA in her own name. She was advised that Financial

Institution F requires that in order for a surviving spouse beneficiary to withdraw funds from a deceased spouse's IRA, the beneficiary must fill out a form on which he or she elects "total distribution" or "rollover distribution." Taxpayer A then received a letter, dated April 11, 2009, which contained the election form. On April 22, 2009, Taxpayer A completed the form by electing "total distribution" and returned it to Financial Institution F.

By letter dated May 5, 2009, Financial Institution F notified Taxpayer A that it had transferred Amount 2 from IRA E to a temporary IRA opened in Taxpayer A's name, IRA H. This is automatically done pursuant to in-house procedures of Financial Institution F. On May 6, 2009, Amount 2 was distributed from IRA H and deposited into Account G in accordance with Taxpayer A's instructions on the election form. Financial Institution F then closed the temporary IRA, IRA H. On May 12, 2009, Amount 4 was used to purchase a CD. Taxpayer A received Form 1099-R showing a distribution of Amount 2 from IRA H.

Taxpayer A represents that she did not understand the tax consequences of these transactions. While she wanted and intended that the funds in both IRA C and IRA E be put in an IRA in her own name, she did not know how to accomplish a rollover. The meeting with Individual J at Financial Institution F had the effect of reaffirming in Taxpayer A's mind that if she used funds from her deceased spouse's IRAs to purchase CDs, the investments would remain in a retirement plan. She was given no guidance as to how to fill out Financial Institution F's distribution/election form so that she would make a proper election to transfer the funds in IRA E to a spousal IRA in Taxpayer A's name. Upon filling out the form as advised by Financial Institution F, Taxpayer A checked "total distribution." She believed "total distribution" meant that no funds would be left in Individual B's name, and by investing the funds in CDs within the 60-day time period, she believed she had kept the funds in a tax deferred account in her name.

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 distributions of Amounts 3 and 4.

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)(C)(i) of the Code provides, in summary, that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 1.408-8 of the Income Tax Regulations, Q&A-5, provides that a surviving spouse is the only individual who may elect to treat a beneficiary interest in an IRA as the beneficiary's own account. This election is made by the surviving spouse re-designating the account as an account in the name of the surviving spouse as IRA owner rather than as beneficiary. Q&A-5 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the IRA owner for whose benefit the trust is maintained.

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) 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 Amounts 3 and 4 was due to miscommunication between herself and Financial Institution F which resulted in the funds being placed in a non-IRA account.

Therefore, pursuant to section 408(d)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA C and Amount 4 from IRA H. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute not more than the sum of Amounts 3 and 4 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, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) 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 does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) 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.

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: