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

201237028

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 18 2012

U.I.L. 408.03-00

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Legend:

Taxpayer A = xxxxxxxxxxxxxxxxxx

Individual B = xxxxxxxxxxxxxxxxx

IRA Y = xxxxxxxxxxxxxxxx

Company C =xxxxxxxxxxxxxxxx

Amount D = xxxxxxxxxxxxxxxx

Amount E = xxxxxxxxxxxxxxxxx

Company D = xxxxxxxxxxxxxxxxx.

Financial Advisor P = xxxxxxxxxxxxxxxxx

Date 1 = xxxxxxxxxxxxxxxxx

Date 2 = xxxxxxxxxxxxxxxx

Date 3 = xxxxxxxxxxxxxxxx

Dear xxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxxx, 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 penalties of perjury in support of your request.

Taxpayer A, age 67, represents that she received a distribution from IRA Y totaling Amount E. 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 Financial Advisor P. In addition, Taxpayer A suffered from an illness that prevented her from realizing the error. Taxpayer A further asserts that Amount D, a portion of Amount E that she wishes to rollover has not been used for any other purpose.

Taxpayer A is the widow of Individual B. Individual B maintained IRA Y with Company C. Taxpayer A was the beneficiary of IRA Y.

On Date 1 Individual B died and Taxpayer A received instructions from Financial Advisor P, an agent for Company D, for claiming the death benefits. On Date 2 Taxpayer A received a lump sum distribution of Amount E from IRA Y and deposited the check into her checking account. On Date 3 Taxpayer A, upon the advice of Financial Advisor P, wrote a check for Amount D to Company D in order to affect a rollover and to purchase a qualified individual retirement annuity with Company D. Financial Advisor P inadvertently marked the Non-Qualified annuity box instead of the Qualified annuity box contrary to Taxpayer A's instructions and intentions.

Taxpayer A believed that Financial Advisor P, on her behalf, had rolled over Amount D to a qualified IRA annuity. Taxpayer A was not aware of the mistake on the part of Individual P until 2010 when she received Form 1099-R from Company C and contacted her accountant for preparation of her year 2010 tax return.

In a letter dated April 1, 2010, Financial Advisor P admitted that while completing the paperwork he inadvertently marked the "Non-Qualified" box. Financial Advisor P further states that he failed to recognize that the contract type was labeled Non-Qualified when he received a copy.

Taxpayer A has been under doctor's care for the treatment of metastatic breast cancer for several years. She has been extremely ill which required strong pain medication as well as anti-anxiety medication during the period following Individual B's death and through the 60-day period following the distribution of Amount E, which prevented her from noting Financial Advisor P's mistake.

Based on the foregoing 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 Amount D.

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 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 received 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 included 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)(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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 is consistent with Taxpayer A's assertion that the failure to accomplish a timely rollover was caused by an error committed by Financial Advisor P and that Taxpayer A's medical condition contributed to her failure to realize that Amount D was not placed in a qualified annuity.

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 of Amount D from IRA Y. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D 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 transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter expresses no opinion as to whether IRA Y satisfied the requirements of section 408(a) of the Code.

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A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxx, SE:T:P:RA:T3, at xxxxxxxxxxxxx.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice 437

cc: xxxxxxxxxxxxxxxxxx