201535027

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 01 2015

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend

Taxpayer A =

Decedent B =

IRA C =

Account D =

Account E =

Trust F =

Financial Institution G =

Financial Institution H =

Financial Institution I =

Financial Advisor J =

Amount 1 =

Dear :

This is in response to your request dated June 23, 2014, as supplemented by correspondence dated November 7, 2014, January 27, 2015, and April 8, 2015, in which you request, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 408(d)(3) 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 represents that on December 29, 2011, Trust F received a distribution from IRA C equal to Amount 1. Taxpayer A, as the trustee of Trust F, asserts that her failure to roll over the distribution from IRA C to her own IRA within the 60-day period described in section 408(d)(3) was due to financial institution error.

Taxpayer A was married to Decedent B on the date of his death. Decedent B maintained an IRA and designated Trust F as the beneficiary of the IRA. After Decedent B died, the IRA was transferred to Trust F and became IRA C, which was maintained by Financial Institution G. Taxpayer A is the sole trustee of Trust F and has the power to control and direct the assets of Trust F.

In 2011, Taxpayer A's financial advisor retired. Taxpayer A's new investment advisor, Financial Advisor J, worked for Financial Institution H. Financial Advisor J advised Taxpayer A to transfer IRA C to Financial Institution H and completed forms on behalf of Taxpayer A to transfer IRA C to Financial Institution H. However, on December 29, 2011, Amount 1 was transferred from IRA C to Account D, a non-IRA account maintained by Financial Institution H. Financial Institution G did not withhold 20 percent or issue a Form 1099-R with respect to the distribution of Amount 1.

In April of 2012, Financial Advisor J left Financial Institution H and became affiliated with Financial Institution I. The assets originally in IRA C were again transferred to a non-IRA account, Account E, maintained by Financial Institution I and managed by Financial Advisor J.

Taxpayer A believed that Amount 1 continued to be held in an IRA account and that she was merely changing financial institutions when the transfers to Account D and Account E were made. Taxpayer A continued to receive what she presumed were required minimum distributions from Account E. In March of 2013, when Taxpayer A's accountant was preparing her federal Income Tax Return, Taxpayer A discovered that on December 29, 2011, the assets of IRA C had been transferred to a non-IRA account. Taxpayer A represents that Account

D and Account E have not been used for any other purpose. The request is accompanied by a letter from Financial Advisor J acknowledging the error.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA C and that Taxpayer A be given a period of 60 days from the issuance of a private letter ruling to roll over Amount 1 into her own IRA.

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.

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) 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 or 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)(C)(i) of the Code provides that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than IRA owner's spouse, as a result of the death of the IRA owner.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary of an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

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 of the Treasury 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).

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.

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust, who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse is treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, is not eligible to roll over the disturbed IRA proceeds into her own IRA.

However, the general rule will not apply where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

In this case, Decedent B designated Trust F as the beneficiary of his IRA. Taxpayer A, Decedent B's surviving spouse, is the sole trustee of Trust F with the power to distribute to herself the assets of Trust F. Thus, Taxpayer A could have taken a distribution from IRA C and rolled it over into an IRA in her name. However, due to financial institution error, the assets of IRA C were distributed and deposited into a non-IRA account. Taxpayer A did not discover the error until after the expiration of the 60-day rollover period.

The information and documentation submitted by Taxpayer A are consistent with her assertion that the failure to accomplish a rollover of Amount 1 from IRA C into her own IRA within the 60-day period prescribed by 408(d)(3)(A) of the Code was due to financial institution error.

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 1 from IRA C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into her own IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) 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 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.

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
at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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

cc: