



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 15 2007

T:EP:RA:TI

Uniform Issue List: 408.03-00

Legend:

- Taxpayer A = *****

- Taxpayer B = *****

- Financial Advisor C = *****
- Insurance Company D = *****
- Financial Institution E = *****
- Account E-1 = *****
- Account E-2 = *****
- Financial Institution F = *****
- Account F-1 = *****
- Account F-2 = *****

- Account F-3 = *****
- IRA Annuity G = *****

IRA Annuity H = *****

Amount 1 = \$ *****
Amount 2 = \$ *****
Amount 3 = \$ *****
Amount 4 = \$ *****
Amount 5 = \$ *****
Amount 6 = \$ *****
Amount 7 = \$ *****

Dear *****:

This is in response to a letter dated November 9, 2006, as supplemented by correspondence dated December 8, 2006, in which your authorized representative requests, on your behalf, 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 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 errors committed by Financial Advisor C and Financial Institution F which led to Amount 1 being placed into non-IRA Account F-1.

Taxpayer A was the owner of IRA Annuity G, valued at Amount 1. Taxpayer A's spouse, Taxpayer B (together, the "Taxpayers"), was the owner of IRA Annuity H, valued at Amount 2. Both annuity contracts, issued by Insurance Company D, are described as deferred variable annuity contracts, qualified as Individual Retirement Annuities under section 408(b) of the Code.

In late 2003 or early 2004, the Taxpayers began a business relationship with Financial Advisor C who was, at the time, associated with Financial Institution E. When they opened certain accounts (Account E-1 and Account E-2) with Financial Institution E, the Taxpayers informed their new financial advisor about IRA Annuities G and H, and these annuities were listed on Financial Institution E's statements as assets of the Taxpayers. Both Retirement Annuity G and Retirement Annuity H were clearly described as IRAs in the records of Financial Institution E.

In December 2004, Financial Advisor C informed the Taxpayers that he was resigning his employment with Financial Institution E and joining Financial Institution F. Because Financial Advisor C was the Taxpayers' financial advisor, they

decided to have Financial Advisor C transfer their accounts from Financial Institution E to Financial Institution F. The Taxpayers also decided to cash out Retirement Annuities G and H, and roll the proceeds from each of those annuities into new IRAs established with Financial Institution F. The Taxpayers relied on Financial Advisor C to set up whatever corresponding accounts at Financial Institution F were necessary to achieve tax-free rollover transactions. Financial Advisor C was aware that the Taxpayers would not have wanted a taxable transfer of any IRA funds. The Taxpayers paid a surrender charge of \$ _____ in order to roll over their retirement assets from Insurance Company D to Financial Institution F.

In January 2005, Financial Institution F prepared the paperwork necessary for the Taxpayers to cash out their retirement annuities with Insurance Company D, and presented the documents to the Taxpayers for their signatures. On February 1, 2005, the Taxpayers visited Financial Advisor C in his office and delivered two separate checks received from Insurance Company D: one check for Amount 1, payable to Taxpayer A; and a second check for Amount 2, payable to Taxpayer B. The checks were dated January 24, 2005. On February 3, 2005, Taxpayer B's check for Amount 2 was deposited into a new IRA Account F-2, with Financial Institution F. Also on February 3, 2005, Taxpayer A's check for Amount 1 was erroneously deposited into the Taxpayers' new joint brokerage account (Account F-1) at Financial Institution F. Although Account F-1 was not a qualified IRA, the Taxpayers believed that they had successfully rolled over the entire amount distributed from IRA Annuity G into a qualified IRA at Financial Institution F.

In November 2005, in conjunction with their estate planning, the Taxpayers had Financial Advisor C transfer the assets from Account F-1 into a revocable trust (Account F-3) established at Financial Institution F. Since the joint account (Account F-1) was not designated as an IRA account, Account F-3 also was established as a non-IRA trust account. However, because the Taxpayers continued to believe that Account F-1 was an IRA, they also believed that the assets from that account continued to be held as an IRA after they were transferred to Account F-3.

Financial Institution F and Financial Advisor C acknowledge that they should have established an IRA for Taxpayer A, and Amount 1, the cash proceeds from Taxpayer A's IRA Annuity G should have been deposited in an IRA account at Financial Institution F to accomplish a tax-free rollover.

Account F-1 provided check-writing privileges for the Taxpayers. Until the assets of Account F-1 were transferred to Account F-3 in November 2005, checks were issued from Account F-1 to pay personal expenses totaling Amount 3, including two payments of estimated tax totaling Amount 4 to cover the taxes owed as a result of the distributions that were made from Account F-1. Also during 2005, occasional withdrawals were made from Account F-1 for "personal expenses," totaling Amount 5. In March 2006, checks totaling Amount 6 were issued against Account F-3.

The Taxpayers remained unaware until July of 2006 that Amount 1 had not been rolled over to an IRA with Financial Institution F. On July 28, 2006, the Taxpayers wrote to Financial Advisor C and Financial Institution F, expressing their dismay that the proceeds from Taxpayer A's Retirement Annuity G had not been rolled over.

Based on the above facts and representations, you request a ruling 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 distribution of Amount 7 (Amount 1, reduced by Amounts 3, 5 and 6) from Retirement Annuity G.

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 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 Taxpayers A and B is consistent with Taxpayer A's assertion that her failure to accomplish a timely rollover was due to errors committed by Financial Advisor C and Financial Institution F, causing Amount 1 to be deposited into Account F-1, a non-IRA account. Amount 1 in Account F-1 was later reduced by certain distributions (Amounts 3 and 5) prior to the remaining balance being transferred to Account F-3, a non-IRA account, and being further reduced by Amount 6.

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 7 (Amount 1 reduced by Amounts 3, 5 and 6) from Retirement Annuity G. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 7 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, Amount 7 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 that may be applicable thereto.

This ruling 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.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you wish to inquire about this ruling, please *****
***** address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose
- ▶ Copy of cover letter to Authorized Representative