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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN - 5 2006

200613036

UIC: 408.03-00

SE:T:EP:RA:T3

LEGEND:

Taxpayer A:

Address B:

Custodian M:

Company N:

Company O:

IRA Annuity X:

Country W:

Trust T:

Amount A:

Amount B:

Amount C:

Dear

This is in response to your request dated , as supplemented by correspondence dated , in which you request 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, age 77, represents that he received a distribution from IRA Annuity X totaling Amount B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to miscommunication or misunderstanding with Company N which led to Amount B being placed into a non-IRA account. Taxpayer A further represents that Amount B has not been used for any other purpose.

Taxpayer A established a self-directed individual retirement account ("IRA") in , 1992, with Custodian M by means of rollovers totaling Amount A from other IRAs. In , 1992, Taxpayer A, through Custodian M, as custodian, established IRA Annuity X through Company N. The representative for Company N in Country W was Company O. Taxpayer A was the individual insured under IRA Annuity X, and Custodian M was shown as the owner of IRA Annuity X. IRA Annuity X had a 10-year maturity as measured from its issuance date of , 1992.

It has been represented that Taxpayer A received distributions from his IRA Annuity X with respect to calendar years 1999 through 2003.

In , 2000, upon divorce from his wife, Taxpayer A established Trust A. Custodian M was notified that Taxpayer A wanted to change his beneficiary from his former spouse to Trust A and Custodian M requested the appropriate documents from Company N. In , 2001, Taxpayer A signed documents received from Company N relating to his change of beneficiary. However, Company N either did not receive the forms or did not process them. Accordingly, during , 2002, Taxpayer A signed another Declaration of Acceptance and returned it to Company N. As a result, effective , 2002, the ownership of IRA Annuity X was changed from Custodian M to Taxpayer A.

The , 2002, Declaration of Acceptance ("Declaration") provides as follows:

> "The undersigned, Taxpayer A, Address B, herewith takes over as owner all rights and obligations of IRA Annuity X, issued , 1995".

Trust T is then named as the beneficiary of Taxpayer A's IRA Annuity X.

It has been represented that , 1995, is not the correct date of issuance of IRA Annuity X (see above). .

At the time, Taxpayer A believed he was merely changing the beneficiary of IRA Annuity X and did not understand that by signing the Declaration of

Acceptance that the contract ownership was being changed from Custodian M to himself. Taxpayer A was not advised by either Custodian M, Company N or Company O that his signing the above-referenced Declaration would result in his receiving a taxable distribution totaling the then IRA Annuity X amount which approximated Amount B.

It was not until almost two years later, during 2004 that Taxpayer A became aware of the distribution when he received a Corrected Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., with respect to calendar year 2002 which showed a distribution in the amount of Amount C. Accompanying this Form 1099-R was a letter from Custodian M which indicated that because the ownership of IRA Annuity X was no longer in the name of Custodian M, it was no longer tax-deferred. The letter also indicated that Taxpayer A's account remained open, and gave the same annuity number that Taxpayer A's annuity contract had prior to , 2002.

It has been represented that the contract number associated with IRA Annuity X was not changed after Taxpayer A signed the above-referenced Declaration during , 2002, and that that no funds were transferred out of IRA Annuity X into another annuity after Taxpayer A signed the above-referenced Declaration.

After receiving the , 2004 letter and "Corrected" Form 1099-R referenced above, Taxpayer A requested that Custodian M correct the 2002 change of ownership so that Taxpayer A would not have to take Amount C into income for 2002. However, Custodian M indicated that it could not do so. Additionally, Company N advised Taxpayer A that it could not do so.

A , 2004, letter from Custodian M to Taxpayer A indicates, in relevant part, that Company N had advised Custodian M that Taxpayer A's , 2002 Declaration created a "deemed distribution". Additionally, said letter indicated that Custodian M did not receive a request from Taxpayer A to change the ownership of his IRA Annuity X.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the 2002 distribution of Amount B from IRA Annuity X.

With respect to your ruling request, 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 Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by either a miscommunication or a misunderstanding with Company N which led to Amount B being placed into a non-IRA account.

Thus, based on the above, we conclude with respect to your ruling request:

The Internal Revenue Service hereby waives the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the 2002 distribution of Amount B from IRA Annuity X. Taxpayer A is granted a period not to exceed 60-days as measured from the date of this letter ruling to contribute an amount not to exceed said Amount B into another IRA (either IRA annuity or IRA account) maintained either with Custodian M or any other entity authorized to act as an IRA custodian.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6), with respect to any calendar year.

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

A copy of this letter ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact , Esquire, (I.D. # ), at .

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437