



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

200447039

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L.: 408.03-00

AUG 27 2004

SE.T.E.P.RA.T3

Legend:

- Taxpayer A = *****
- Taxpayer B = *****
- IRA X = *****
- IRA Y = *****
- IRA Z = *****
- Account C = *****
- IRA U = *****
- Bank R = *****
- Bank S = *****
- Bank T = *****
- Individual C = *****
- Company P = *****
- Company W = *****
- Amount D = *****
- Amount E = *****
- Amount F = *****

200447039

Amount G = *****

Amount H = *****

Amount I = *****

Amount J = *****

Dear *****:

This is in response to your letter dated June 17, 2004, as supplemented by correspondence dated August 8, 2004 and August 25, 2004, submitted on your behalf by your authorized representative, in which you request a ruling to waive 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 penalties of perjury in support of the ruling requested.

Taxpayer A in married to Taxpayer B and they file a joint Federal income tax return. Taxpayer A maintained three individual retirement arrangements, IRA X, IRA Y, and IRA Z, with Bank R, Bank S, and Bank T, respectively. On or about January 11, , Taxpayer A asserts that he spoke with Individual C, an investment advisor with Company P, about consolidating and transferring his IRAs to Company P. Taxpayer A further asserts that Individual C informed him that he could transfer his IRAs to Company P without triggering income taxes.

Taxpayer A states that, based on Individual C's representations, he closed his IRAs at Bank R, Bank S, and Bank T. Account documentation submitted with this request for a ruling indicates that on January 13, , Amount D was distributed to Taxpayer A from IRA X; Amount E was distributed to Taxpayer A from IRA Y; and that Amount F was distributed to Taxpayer A from IRA Z. (Taxpayer A states that even though he closed IRA X at Bank R, he only intended to roll over a portion of Amount D to the new Company P IRA. The exact amount Taxpayer A intended to roll over from IRA X to the new Company P IRA is Amount G. Bank R issued separate checks to Taxpayer A representing the "rollover" amount and the "non-rollover amount"). Taxpayer A states that he specifically instructed Individual C to establish a new IRA for him at Company P and to deposit all the distributions from IRA X, IRA Y and IRA Z into the new IRA.

Neither Bank R nor Bank T designated their distribution checks from IRA X and IRA Z, respectively, as representing funds held in IRAs or funds to be rolled over into another eligible retirement plan. Neither Bank R nor Bank T withheld any tax

from the amounts distributed from IRA X and IRA Z, respectively. Bank S issued a check to Taxpayer A in the amount of Amount F and marked the check "IRA Redemption".

On January 16, , Taxpayer A opened IRA U, a rollover IRA with Company P. Account documentation for the month ending January submitted with this request indicates that a deposit in the amount of Amount E was made to IRA U during the month of January . Further, the same consolidated account statement indicates that a deposit in the amount of Amount H (Amount F plus Amount G) was made to Account C, a non-retirement command account Taxpayer A also maintains with Company P.

On March 10, , Taxpayer A and Taxpayer B met with their accountant who informed them that Amount H was not invested in an eligible retirement plan and would have to be included in their gross income for the tax year. Taxpayer A asserts that he immediately contacted Individual C who informed him that he did not know how the mistake occurred. Taxpayer A asserts that he relied on Individual C and gave Individual C specific instructions to deposit Amount H into IRA U. Taxpayer A asserts that he has not used Amount H since it has been in Account C. Account statements submitted by Taxpayer A indicate that Account C, as of the beginning of January and prior to the deposit of Amount H, had an opening balance of Amount I, and after the deposit of Amount H, an ending balance of Amount J. Taxpayer A has submitted account statements for Account C from January through June that indicates a balance far in excess of Amount H.

On July 6, , Taxpayer A received a deposit notification from Company W (formerly Company P) indicating that a transfer in the amount of Amount H was made from Account C to IRA U and the deposit has been coded as a "rollover deposit". Taxpayer A asserts that he did not use Amount H while it was in Account C; that his intention from the beginning of this transaction was to complete tax-free rollovers; and that Individual C's failure to deposit Amount H into IRA U, as instructed, caused him to miss the 60-day rollover period.

Based on the facts and representations submitted, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount G from IRA X and Amount F from IRA Z.

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)(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 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, 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.

In this case, Taxpayer A, on January 13, , closed the IRAs he maintained with Bank R, Bank S, and Bank T as supported by the IRA account statements submitted with his ruling request. Taxpayer A asserts that, prior to closing his IRAs, he met with Individual C, an employee at Company P, who assured him that he (Taxpayer A) could transfer his IRA distributions to a new IRA with Company P and that such transfer would be a non-taxable transfer. The consolidated account statement Taxpayer A received from Company P indicates that on January 16, , a new IRA, IRA U, was in fact established with Company P; that only the distribution deposited into IRA U was Amount E from IRA Y; and that Amount F and Amount G were not deposited into IRA U, but deposited into Account C, a non-retirement account Taxpayer A maintains with Company P.

Taxpayer A asserts that he relied on Individual C to open IRA U and to deposit the three distribution checks into IRA U. Taxpayer A asserts that he did not use Amount F and Amount G while these amounts were in Account C and submitted account statements for Account C from January to June that show that Account C has always maintained a balance far in excess of Amount H (the sum of Amount F and Amount G). On July 6, , to show his intent to complete a tax-free rollover, Taxpayer A withdrew Amount H from Account C and transferred it to IRA U as supported by the deposit notification issued to Taxpayer A by Company W (formerly Company P). Company W coded the deposit of Amount H as a "rollover deposit".

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount F from IRA X and Amount G from IRA Z. On July 6, Taxpayer A withdrew Amount H (the sum of Amount F and Amount G) from Account C and contributed Amount H to IRA U. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, this amount will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 is based on the assumption that IRA U, IRA X, IRA Y, and IRA Z satisfy the requirements of Code section 408(a) at all times relevant to this transaction.

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 is being sent to your authorized representative pursuant to a power of attorney (Form 2848) on file in this office.

If you have any questions regarding this letter, please contact

*****SE:T:EP:RA:T2*****

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose