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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 01 2004

Uniform Issue List: 408-03-00

SE: T: ER: RA: T 1

Legend:

Taxpayer =
Custodian A =
IRA B =
Custodian C =
Amount D =
Amount E =
Amount F =
Amount G =

Dear [REDACTED] :

This letter is in response to a request for a letter ruling dated July 8, 2004, in which you have applied for 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 penalty of perjury in support of the ruling requested:

The Taxpayer is permanently disabled and has been on retirement disability since 1991. All of the Taxpayer's retirement savings accumulated prior to his becoming disabled was invested in IRA B, an individual retirement account ("IRA") under Code section 408(a) with Custodian A. Since the Taxpayer was losing money, he decided to close IRA B and invest the money elsewhere. On November 25, 2002, the Taxpayer and his spouse met with a financial security officer ("FSO") of Custodian C. The FSO assured them that the Taxpayer could open an IRA using the funds from IRA B. Two checks from Custodian A dated November 19, 2002, and November 25, 2002, totaling Amount D and Amount E, respectively, were given to Custodian C.

The FSO of Custodian C recommended that the Taxpayer deposit Amount F in certificates of deposit and Amount G in a money market account. Based on assurances from this individual, the Taxpayer assumed these investments would be placed in IRA accounts sponsored by Custodian C.

On May 3, 2004, the Taxpayer and his spouse received notice from the Internal Revenue Service that the Taxpayer owed additional tax because the funds from IRA B were never deposited in IRA accounts. The Taxpayer went to Custodian C and was informed by a manager that funds from IRA B were placed in non-IRA certificates of deposit and money market accounts. The manager indicated that due to the inexperience of the FSO, the transactions were not completed properly. Custodian C has acknowledged in writing that the failure to deposit Amounts D and E in IRA accounts was due to the inexperience of the FSO.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amounts D and E because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) 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 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) provides that the Secretary 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, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to Code 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 FSO of Custodian C recommended that the Taxpayer deposit the proceeds from IRA B in IRA certificates of deposit and money market accounts. Based on assurances from this individual, the Taxpayer assumed these investments would be deposited in IRA accounts sponsored by Custodian C. Custodian C has acknowledged in writing that the failure to deposit Amounts D and E in IRA accounts was due to the inexperience of the FSO.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts D and E. The Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amounts D and E to IRA accounts. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3).

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. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact [REDACTED], SE:T:EP:RA:T1, I.D. # [REDACTED], at (202) [REDACTED].

Sincerely yours,

Carlton Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
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Notice of Intention to Disclose, Notice 437