



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200518083

U.I.L. 408.03-00

FEB 10 2005

SE: T. EP: RA: T2

Legend:

- Taxpayer A = *****
- IRA X = *****
- Company C = *****
- Amount D = *****
- Account H = *****
- Bank B = *****
- IRA Y = *****
- Company P = *****

Dear *****:

This is in response to your letter dated December 6, 2004, as supplemented by correspondence dated December 28, 2004, December 31, 2004, and February 3, 2005, 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 penalties of perjury in support of your request.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Company C. Documentation submitted with this request for a ruling indicates that on [REDACTED] Taxpayer A received a distribution from IRA X in the amount of Amount D. On [REDACTED] Taxpayer A deposited Amount D into

Account H, a checking account he maintains with Bank B. Documentation submitted by Taxpayer A indicates that he established IRA Y with Company P on [REDACTED]. Taxpayer A represents that when he attempted to redeposit Amount D into IRA Y, he mailed the check to the wrong Company P address. Documentation submitted by Taxpayer A indicates that he wrote a check in the amount of Amount D, made payable to Company P "FBO Taxpayer A". The check is dated [REDACTED] and contains the IRA Y account number.

Taxpayer A represents that the check was returned to him, and that on [REDACTED] he expressed mailed the same check to Company P at the correct address. Documentation submitted by Taxpayer A indicates that Amount D was deposited into IRA Y on [REDACTED] subsequent to the 60-day rollover period. Taxpayer A states that he missed the 60-day rollover period because the check in the amount of Amount D was mailed to the wrong Company P address.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

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)(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 received 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 included 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 section 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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.

Documentation submitted by Taxpayer A indicates that he received a distribution of Amount D from IRA X on [REDACTED]. The information submitted also indicates that Taxpayer A established IRA Y on [REDACTED] within the 60 day rollover period, and that on [REDACTED] also within the 60-day rollover period, he wrote a check in the amount of Amount D to Company P for deposit in IRA Y. Even though Amount D was deposited into IRA Y after the 60-day rollover period, the [REDACTED] check made payable Company P as custodian of IRA Y supports Taxpayer A's intent to make a tax-free rollover of Amount D to another IRA.

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 D from IRA X. On [REDACTED] Amount D was deposited into IRA Y. 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 D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed section 401(a)(9) of the Code.

This ruling assumes that IRA X and IRA Y satisfy the qualification requirements of Code section 408 at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transactions 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 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 ruling is being sent to your authorized representative in accordance with a power of attorney (Form 2848) on file in this office.

If you have any questions concerning this ruling, 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 letter ruling
- Notice 437