



TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

200518084

U.I.L. 408.03-00

FEB 11 2005

SE: T: EP: RA: T2

Legend:

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

Dear *****:

This is in response to your letter dated November 26, 2004, as supplemented by correspondence dated December 16, 2004, submitted on your behalf by your authorized representative 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 maintained an individual retirement arrangement, IRA X, with Company C. Taxpayer A represents that on [redacted], he withdrew Amount D from IRA X with the intent to roll it over to an IRA with Bank B. Taxpayer A represents that the bank that services the IRA X contract issued by

Company C refused to directly transfer Amount D to another IRA thus causing him to withdraw Amount D from IRA X and to re-deposit it into another IRA.

Documentation submitted with this request for a ruling indicates that a check was issued to Taxpayer A in the amount of Amount D on [REDACTED]. Documentation submitted also indicates that on [REDACTED] Taxpayer A opened an account with Bank B. Taxpayer A asserts that he asked Bank B personnel to help him establish an IRA into which Amount D could be deposited. Taxpayer A established Account H with Bank B, and documentation submitted indicates that Amount D was deposited into that account on [REDACTED]. Taxpayer A asserts that he believed that he had opened an IRA with Bank B and thus directed Bank B to invest Amount D in a long-term certificate of deposit. Account statements for Account H show that it has several component accounts, one of which is account 13 into which Amount D was deposited.

Taxpayer A asserts that he was not aware that Amount D had not been rolled over into an IRA until he received a notice of deficiency dated [REDACTED] from the Service, and was not aware that different forms should have been used to establish an IRA. Taxpayer A also states that he did not include Amount D in his gross income for tax year [REDACTED] because he assumed that Amount D had been rolled over to an IRA. Taxpayer A further asserts that he relied on Bank B personnel to establish the IRA and completed all the necessary forms given to him by Bank B personnel in establishing Account H. Taxpayer A filed his request for a waiver of the 60-day rollover requirement as soon as he discovered that Amount D had not been rolled over to an IRA within 60 days.

Taxpayer A states that he has not used any of Amount D since it has been in Account H, that he has not commingled Amount D with any other assets, and that Amount D continues to be held in Account H. Taxpayer A submitted copies of account statements for Account H from [REDACTED] to the present that shows that Amount H has remained intact since it was deposited in Account H.

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.

200518084

Documentation submitted by Taxpayer A indicates that he received a distribution of Amount D from IRA X on [REDACTED] and that he deposited that amount into Account H on [REDACTED]. The wrong application form was completed by Taxpayer A when he attempted to roll over Amount D into an IRA that resulted in Amount D being deposited into a non-retirement account and not a rollover IRA as he intended. Taxpayer A asserts that he relied on Bank B to invest Amount D in an IRA and assumed that Amount D had been invested in an IRA.

Taxpayer A states that he was unaware that Amount D was not invested in an IRA until he received notification from the Service on [REDACTED] indicating that he failed to include Amount D in his gross income for tax year [REDACTED]. Taxpayer A asserts that the failure of Bank B to provide him with the correct forms to establish an IRA caused him to miss the 60-day rollover period. Documentation submitted by Taxpayer A with this request indicates that there have been no withdrawals of any of Amount D since it has been held in Account H.

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 D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an 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 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 satisfied 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.

200518084

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