



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200505091

U.I.L. 408.03-00

NOV 8 2004

T:EP:RA:T2

Legend:

Taxpayer A = *****
IRA X = *****
Bank B = *****
Amount D = *****
Account F = *****
Individual M = *****

Dear *****:

This is in response to your letter dated October 21, 2004, as supplemented by correspondence dated November 4, 2004 and November 5, 2004, in which you request a ruling to waive 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 penalties of perjury in support of the ruling requested.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Bank B. Prior to [REDACTED], IRA X was invested in a certificate of deposit issued by Bank B. On [REDACTED], Individual M, a Bank B employee, states that Taxpayer A instructed a Bank B customer service representative to change the term of the certificate of deposit to a [REDACTED] term certificate. Individual M further

states that the [REDACTED] term does not apply to Bank B's retirement plan products and that it appears to have been a miscommunication between Taxpayer A and the Bank B customer service representative as to the transfer. Taxpayer A states that at the time of the transfer, it was his intention to roll Amount D back to an IRA.

Taxpayer A asserts that he thought he had more than 60 days in which to roll Amount D back to an IRA. Taxpayer A asserts that on [REDACTED] he attempted to rollover Amount D to an IRA and learned that he had missed the 60-day rollover period. The [REDACTED] statement submitted by Taxpayer A shows that Amount D remains in Account F. Taxpayer A filed for a request for a waiver of the 60-day rollover requirement as soon as he discovered that the 60-day rollover period ended on [REDACTED]. Further, Individual M states that the funds never left Bank B and that Amount D continues to be held in Account F.

Based on the above facts and representations, you request a ruling that the Internal Revenue 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)(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 property 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 includable 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 includable in gross income because of the application of section 408(d)(3).

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 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 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.

From the documentation submitted, it appears that on [REDACTED], Taxpayer A transferred Amount D from IRA X to Account F. Taxpayer A asserts that he initiated the transfer with the intention of rolling Amount D back to an IRA. Taxpayer A further asserts that he was not aware that he had 60 days in which to roll Amount D over to an IRA. The 60-day rollover period ended on [REDACTED]. The September 2004 account statement submitted with this request indicates that Amount D remains in Account F. Individual M writes that the certificate of deposit (Account F) to which Amount D was transferred does not apply to retirement plan accounts and that there was a miscommunication between Taxpayer A and a Bank B customer service representative as to the type of product available to Taxpayer A. Taxpayer A submitted this request for a waiver as soon as he discovered that he had missed the 60-day rollover period.

Therefore, pursuant to section 408(d)(3) 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 Code section 408(a) of the Code, except the 60-day rollover requirement, are met with respect to contribution, Amount D will be considered a valid rollover contribution within the meaning of section 408(d)(3) 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 assumes that IRA X meets the requirements of Code section 408(a) at all times relevant to this transaction.

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.

If you have any questions about 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 this ruling
Notice of Intention to Disclose