



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

200544026

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.00-00
408.03-00

AUG 10 2005

SE. T. EP. RA. WK

Legend:

Taxpayer A =

Individual B =

State T =

Amount D =

IRA X =

Bank B =

County C =

Date 1 =

Date 2 =

Month 1 =

Dear [REDACTED]:

In letters dated [REDACTED], [REDACTED], and [REDACTED], you requested 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 penalty of perjury in support of the ruling requested:

Taxpayer A's primary residence is in State T, and she maintained an individual retirement account ("IRA"), IRA X, with Bank B in said state. On or about Date 1, 2004, Taxpayer A entered into discussions with employees of Bank B in order to transfer or roll over Amount D from her IRA X into another IRA that would be set up to hold real estate notes. Taxpayer A was advised that Bank B could arrange such a transaction if she transferred Amount D into a non-qualified checking account and then wrote a check from said checking account for the purpose of purchasing the realty note for her IRA.

Taxpayer A then signed a Bank B "Traditional IRA Distribution Form" believing that she was effectuating the transfer of Amount D into another IRA that would hold real estate notes.

Finally, on or about Date 2, 2004, Taxpayer A wrote a check to cover the purchase of the real estate note which note was eventually bought and recorded in County C, State T.

Taxpayer A discovered that the realty note which she owned was not in an IRA during Month 1, 2005, when she was in the process of completing her calendar year 2004 Federal Income Tax Return. Taxpayer A's accountant, Individual B, subsequently discovered that, although Taxpayer A's real estate note was not held in an IRA, the interest thereon was being contributed to an IRA. Individual B took corrective action with respect to the real estate note interest but, as of the date of this ruling request, the real estate note remains outside of an IRA.

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

With respect to your ruling request, 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)(E) of the Code provides, in general, that paragraph 408(d) does not apply to any amount required to be distributed under subsection (a)(6).

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 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) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) 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.

The information presented by Taxpayer A demonstrates a failure on the part of Taxpayer A to accomplish her intended rollover because of her misplaced reliance on the advice of Bank B personnel, and Bank B's misunderstanding Taxpayer A's instructions with respect to the investment of Amount D. Due to said misunderstanding, Bank B neither took appropriate steps to insure that Amount D was contributed into an IRA authorized to invest in and hold real estate notes nor advised Taxpayer A of the proper protocol with respect to setting up and maintaining an IRA authorized to hold real estate investments.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D. Pursuant to this ruling

letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D, to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Note that, pursuant to code section 408(d)(3)(E), this letter ruling does not authorize the rollover of any amounts required to be distributed in accordance with Code section 401(a)(9) made applicable to IRAs pursuant to Code section 408(a)(6).

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

If you wish to inquire about this ruling, please contact [REDACTED]
[REDACTED] at [REDACTED] Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose