



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200602052

OCT 19 2005

U.I.L. 408.03-00

SE: T: EP: RA: T2

Legend:

Taxpayer A	= *****
IRA X	= *****
Company B	= *****
Amount D	= *****
Amount E	= *****
Company C	= *****
Account K	= *****
Individual M	= *****
State R	= *****
State S	= *****

Dear *****.

This is in response to your letter dated April 4, 2005, as supplemented by correspondence dated September 13, 2005, and September 14, 2005, 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, an 81 year old individual, maintained an individual retirement arrangement, IRA X, with Company B, while she resided in State R. In November [REDACTED] in anticipation of moving to State S, Taxpayer A withdrew the balance from IRA X and deposited that amount into her checking account. Documentation submitted with this request shows that Company B issued a check dated November 12, [REDACTED] to Taxpayer A in the net amount of Amount E. The gross amount of IRA X at the time of the withdrawal was Amount D. On December 16, [REDACTED] Taxpayer A states that she deposited Amount E into Account K with Company C with the assistance of Individual M. Taxpayer A described Individual M as her State S financial advisor.

Taxpayer A states that in March [REDACTED] Individual M informed her that Amount E had not been rolled over into an IRA. In a letter dated September 13, [REDACTED] to Taxpayer A from Individual M in support of Taxpayer A's request for a waiver of the 60-day rollover requirement, Individual M acknowledged the receipt and deposit of the IRA X funds (in addition to other amounts) into Account K on December 16, 2004. Individual M states that the failure to establish an IRA was due to a miscommunication between himself and Taxpayer A. Account statements submitted by Taxpayer A shows that the IRA funds continue to be held in Account K.

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

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- (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 the time during the 1-year period ending in 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 sections 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.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that she failed to complete a rollover to an IRA within the 60-day rollover period due to a miscommunication between Taxpayer A and Individual M in opening Account K and the failure to properly ascertain that a portion of the funds deposited into Account K represented IRA assets.

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, less amounts necessary to satisfy Code section 401(a)(9), from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D, less required distributions, to an IRA. Provided all other

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requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D, less required distributions, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Taxpayer A is over 70 ½ and therefore has attained her required beginning date for purposes of Code section 401(a)(9). In this regard, this ruling does not authorize the rollover of any portion of Amount D that may be required to be distributed to Taxpayer A by Code section 401(a)(9).

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.

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:

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