



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

T: EP: RA: UK

200604038

OCT 31 2005

U.I.L. 408.03-00

Legend:

Taxpayer A = *****

IRA X = *****

Amount D = *****

Bank B = *****

Bank C = *****

Account J = *****

Dear *****:

This is in response to your letter dated May 18, 2005, submitted on your behalf by your authorized representative, as supplemented by correspondence dated July 22, 2005, August 1, 2005, August 5, 2005, and August 10, 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 maintained an individual retirement arrangement, IRA X, with Bank B. Taxpayer A asserts that in [REDACTED] he decided to rollover IRA X to another IRA at Bank C. Documentation submitted by Taxpayer A shows that on March 5, [REDACTED] he withdrew Amount D from IRA X. Documentation submitted by Taxpayer A also shows that on the same day, he opened Account J at Bank C with a deposit of Amount D. Taxpayer A states that he thought Amount D had been

rolled over into an IRA at Bank C and was not aware that Amount D had not been rolled over to another IRA until he received a notice from the Service in December [REDACTED] stating that he failed to include Amount D in his income for tax year [REDACTED]

The check that Taxpayer A received from Bank B when he withdrew Amount D from IRA X included a notation "normal cashing IRA CD". Taxpayer A states that when he presented this check to Bank C, he assumed that Bank C personnel saw the notation and understood that the funds should be placed in an IRA. The funds were not deposited into an IRA, but into Account J, which is a non-retirement money market account. Taxpayer A states that he made several attempts to get Bank C to put the funds into an IRA, but Bank C refused since the 60-day rollover period had expired. Taxpayer A states that he has not used any of the funds since they have been in Account J and submitted account statements for Account J that verifies that Amount D has remained deposited in Account J since being distributed from IRA X.

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 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 the documentation submitted by Taxpayer A is consistent with his assertion that he failed to complete a rollover to an IRA within the 60-day rollover period due to miscommunication between him and Bank C in establishing Account J, which was established with Bank C on the same day that he withdrew Amount D from IRA X.

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. 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 to Taxpayer A by 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.

200604038

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 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