



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

200615029

JAN 18 2006

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

SE: T: EP: RA: TI

Legend:

Taxpayer A =

Taxpayer B =

Custodian C =

IRA D =

IRA E =

Amount F =

Amount G =

Bank H =

Account I =

Account J =

Date K =

Date L =

Dear :

This letter is in response to a request for a letter ruling dated May 18, 2005, as supplemented by additional information dated September 20, 2005, October 25, 2005, and December 28, 2005, in which you have applied for a waiver of 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 penalty of perjury in support of the ruling requested:

Taxpayer A, age 68, and Taxpayer B, age 64, ("Taxpayers A and B") represent that they received distributions from IRA D and IRA E, respectively, totaling Amount F and Amount G, respectively. They assert that their failure to accomplish rollovers within the 60-day period prescribed by Code section 408(d)(3) was due to a miscommunication between them and an employee of Bank H which led to Amounts F and G being placed into non-IRA accounts. They further represent that Amounts F and G have not been used for any other purpose.

Taxpayers A and B maintained IRA D and IRA E, respectively, Individual Retirement Accounts, under Code section 408(a) with Custodian C. On Date K, they closed IRA D and IRA E with the intention of rolling over the funds to two new IRAs containing certificates of deposit (CD) at another bank. They were issued checks dated Date K, totaling Amount F and Amount G. On the same day, they went to Bank H and completed the appropriate forms to deposit Amount F and Amount G in what they believed were IRA CD accounts.

On Date L, during a visit to renew the CDs, it was determined that the accounts were non-IRA CD accounts. The branch manager of Bank H determined that there must have been a miscommunication between Taxpayers A and B and the bank customer service representative that assisted them in setting up the accounts.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount F and Amount G.

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 60<sup>th</sup> 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 60<sup>th</sup> 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)(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.

Rev. Proc. 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 and documentation submitted by Taxpayers A and B is consistent with their assertion that their failure to accomplish a timely rollover was caused by a miscommunication between themselves and an employee of Bank H.

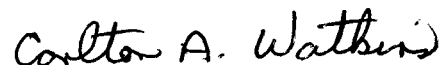
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount F from IRA C and Amount G from IRA D with Custodian C. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to contribute Amount F and Amount G, respectively into individual rollover IRAs. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, Amount F and G will be considered rollover contributions within the meaning of section 408(d)(3).

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 \_\_\_\_\_, SE:T:EP:RA:T1, I.D., at \_\_\_\_\_.

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437