



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200616042

JAN 27 2006

Uniform Issue List: 408.03-00

T:EP:RA:T4

Legend:

Taxpayers A and B=

IRAs C=

IRAs D=

Amount E=

Amount F=

Bank G=

Bank H=

Date 1=

Date 2=

Date 3=

Dear :

Page 2

This is in response to your letter dated \_\_\_\_\_, 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 penalty of perjury in support of the ruling requested:

Taxpayers A and B, \_\_\_\_\_, represent that on Date 1 they received distributions from their Individual Retirement Accounts C and D at Bank G for Amounts E and F. Taxpayers A and B assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a miscommunication with Bank H which led to Amounts E and F being placed into a non-IRA account on Date 2. Taxpayers A and B further represent that Amounts E and F are still in the original joint non-IRA account and that Amounts E and F have not been used for any other purpose.

Taxpayers A and B received notification from Bank G that their 12 month certificates of deposit in IRAs C and D would mature on January 2, \_\_\_\_\_. On Date 1 Taxpayers A and B withdrew Amounts E and F from IRAs C and D with Bank G. The following day (on Date 2) Taxpayers A and B deposited Amounts E and F at Bank H with the intention to open two IRA accounts where they could earn a higher rate of return on their investments. Due to a miscommunication at Bank H, Amounts E and F were used to establish a joint non-IRA account for Taxpayers A and B instead of two rollover IRA accounts. It was not until Taxpayers A and B began to prepare their \_\_\_\_\_ income tax returns on Date 3 that they discovered Bank H's error which was after the 60-day rollover period had expired.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts E and F.

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(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.

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.

Page 4

The information and documentation submitted by Taxpayers A and B are consistent with their assertion that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was caused by a miscommunication with Bank H which led to Amounts E and F being placed into a joint non-IRA account.

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 Amounts E and F from IRAs C and IRAs D. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts E and F into rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amounts E and F will be considered rollover contributions 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 by section 401(a)(9) 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 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.

A copy of this letter ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact \_\_\_\_\_, at  
\_\_\_\_\_. Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

/s/

\_\_\_\_\_, Manager  
Employee Plans Technical Group 4

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

cc: