



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200620027

FEB 21 2006

T:EP:RA:T1

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

IRA B =

Account C =

Amount D =

Bank E =

Financial Institution F =

Dear :

This letter is in response to a request for a letter ruling dated August 4, 2005, as supplemented by additional information dated September 15 and 20, November 7 and 20, and December 7, 2005, and January 19, 2006, 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") regarding a distribution from an individual retirement account (IRA A) under section 408(a).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 47, represents that she received a distribution from IRA B totaling Amount D. The Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake by Financial Institution F. The Taxpayer further represents that Amount D has not been used for any other purpose.

The assets of IRA B were primarily invested in mutual fund stocks. In 2002, Bank E decided to change custodians for these investments and required Taxpayer A to transfer the assets of IRA B to the brokerage division of Bank E, Financial Institution F. Taxpayer A completed the paperwork for such transfer and the transfer was completed on December 20, 2002. However, due to an error by Financial Institution F, the funds were placed in a non-IRA account. The error was not discovered until 2005, during the preparation of Taxpayer A's tax returns. Prior to 2005, Taxpayer A prepared her own tax returns and thought that the Form 1099s received were for informational purposes only, since she assumed the account was an IRA. Financial Institution F submitted a statement acknowledging their error in transferring Taxpayer A's IRA B to a non-IRA account.

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

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)(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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by a mistake by Financial Institution F.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of section 408(d)(3), 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).

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 (202) _____.

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

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