



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

SEP 07 2006

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

Taxpayer B =

Custodian C =

IRA D =

Account E =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Dear :

This is in response to your request dated March 8, 2005, as supplemented by correspondence dated April 10, December 27 and 28, 2005, January 19, March 9, April 4, April 17, May 25, July 3, July 18, and August 7, 2006, 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:

Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a miscommunication or misunderstanding with Custodian C, which led to Amount 1 being placed into a non-IRA account.

Taxpayer A, age , was Taxpayer B's spouse until Taxpayer B's death in June, 2004. Taxpayer B maintained IRA D with Custodian C and Taxpayer A was the sole spousal beneficiary of IRA D. At the time of Taxpayer B's death Amount 2 was being distributed monthly to Taxpayer B. Shortly after Taxpayer B's death, Taxpayer A approached Custodian C concerning a method to take larger distributions. Taxpayer A represents Custodian C recommended she transfer the funds to a "bridge account" upon which checks could be written as needed.

On July 2, 2004, Taxpayer A completed Custodian C's "Annuity Claimant Statement" requesting a lump sum payment. The lump sum payment option indicated that for amounts of \$10,000 or more a "bridge account" would be established. Intending the bridge account to be an IRA, Taxpayer A also completed a "Beneficiary Designation Form" naming her children as beneficiaries. The top of this form indicated that the form should be completed "for Spousal Continuation Claims Only." Taxpayer A went to a local bank and had the forms notarized. On August 4, 2004, Amount 3 (Amount 1 less Amount 4 (federal income tax withholding)) was transferred from IRA D to a non-IRA "bridge account," Account E.

After the transfer of the assets of IRA D to Account E, Taxpayer A requested a distribution of Amount 5 from Account E. Taxpayer A represents that she did not realize Account E was a non-IRA account, or that the transfer of IRA D assets to Account E was a total distribution of IRA D. The mistake was discovered when Taxpayer A received a Form 1099 for the distribution. Except for the Amount 5 distribution, Taxpayer A represents that Amount 1 has not been used for any other purpose. The mistake was discovered when Taxpayer A received a Form 1099 for the distribution.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 6 (Amount 1 – Amount 5).

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)(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 (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 Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was due to a miscommunication or misunderstanding with Custodian C, leading to Amount 1 being placed into a 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 Amount 6 (Amount 1 – Amount 5) from IRA D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 6 into a Rollover IRA. 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 6 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 under the rules of section 401(a)(9) of the Code.

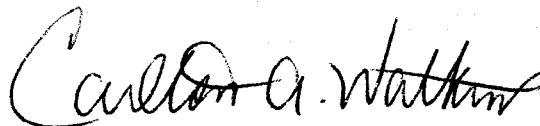
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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.

Copies of this letter and related documents have 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

address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice 437, Notice of Intention to Disclose