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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

SEP 20 2006

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Account D =

Account E =

Financial Institution F =

Amount 1 =

Amount 2 =

Dear :

This letter is in response to a request for a letter ruling dated as supplemented by additional information dated July 25, 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 B) under section 408(a).

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

Taxpayer A, represents that she received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to a mistake committed by Financial Institution C. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A maintained IRA B, sponsored by Financial Institution C. Taxpayer A represents that her financial advisor at Financial Institution C recommended that to have more flexibility in the investment of her IRA funds, she should transfer the account balance in IRA B to two new IRAs sponsored by Financial Institution F. Financial Institution F instructed that they could not accept trustee-to-trustee transfers. IRA B would have to be liquidated prior to transfer. In March, 2005, Taxpayer A completed the necessary paperwork to establish Account D and Account E with Financial Institution F. However, Financial Institution C provided Taxpayer A with forms to open standard brokerage accounts at Financial Institution F. On , Financial Institution C liquidated IRA B. Within 60 days of this date, Amount 1 was deposited into Account D, and Amount 2 immediately transferred to Account E. Financial Institution F questioned the transfer and contacted Financial Institution C. Taxpayer A's financial advisor at Financial Institution C became ill and required surgery. Another individual at Financial Institution C advised Financial Institution F that Accounts D and E were to be standard brokerage accounts.

Shortly after Taxpayer A received a statement from Financial Institution C, reflecting the liquidation of IRA B as an early distribution. Taxpayer A assumed the early distribution was not taxable believing that Accounts D and E were also IRA accounts. Her financial advisor with Financial Institution C did not inform her she should be concerned about an early distribution. In early 2006, Taxpayer A received Form 1099-R for the 2005 tax year for Accounts D and E. When Taxpayer A and her husband began preparing their 2005 Form 1040, they discovered Accounts D and E were non-IRA accounts. Financial Institution F claims that Taxpayer A's financial advisor at Financial Institution C instructed them to open the non-IRA accounts. Financial Institution C has provided documentation acknowledging the error.

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

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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error by Financial Institution C.

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 1 from IRA B. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3).

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.

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:

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Notice of Intention to Disclose, Notice 437