

200706012



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

T:EP:RA:T2

NOV 13 2006

U.I.L. 408.03-00

Legend:

Taxpayer A =

IRA X =

Certificate G =

Amount D =

Bank B =

Account F =

Dear ::

This is in response to your letter dated July 18, 2005, as supplemented by correspondence dated November 29, 2005, and December 19, 2005, submitted on your behalf by your authorized representative, 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 penalties of perjury in support of your request.

Taxpayer A, age 71, maintained an individual retirement arrangement, IRA X, with Bank B. Taxpayer A states that he was notified in March 2005 that a certificate of deposit, Certificate G, issued by Bank B would mature on March 3, 2005. Taxpayer A represents that he went to Bank B on March 3, 2005 and had a discussion with a Bank B representative who was assisting him and decided

not to renew Certificate G at that time but to "wait and see". As a result of not renewing Certificate G, the funds from such, Amount D, were then deposited into Account F, a savings account at Bank B, on that same day. Taxpayer A further states that he is a stroke survivor and has difficulty understanding and conversing about new matters and is hard of hearing and regularly receives assistance from friends with his financial matters.

Taxpayer A represents that he subsequently discovered that Amount D was not invested in an IRA and notified Bank B to correct the mistake. Taxpayer A further states that he did not intend to remove Amount D from IRA X, and that he simply did not wish to reinvest Amount D into another certificate of deposit at that time. It is further represented that Taxpayer A always believed that he was simply not renewing the specific CD within his IRA and had no idea he had withdrawn the funds from IRA X entirely. Taxpayer A further represents that Amount D has not been used for any purpose other than the intended rollover and Amount D continues to remain in his savings account, Account F, since the date of deposit as he never intended to withdraw the funds from his IRA X.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X and allow you to rollover Amount D into an IRA account because failure to waive such requirement would be against equity and good conscience.

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 received 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 in 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 included 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 section 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 and documentation submitted by Taxpayer A is consistent with his assertion that he intended to roll over Amount D into another IRA but he inadvertently placed Amount D 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 D from IRA X. 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 as rollover contribution within the meaning of section 408(d)(3).

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file in this office.

If you have any questions regarding this letter, please contact :
 , SE:T:EP:RA:T:xx at

Sincerely yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc: