



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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T:EP:RA:T4

Legend:

Taxpayer A =

IRA X =

Amount B =

Company C =

Company D =

Account E =

Date 1 =

Date 2 =

Date 3 =

Dear

This is in response to your letter dated February 5, 2007, as supplemented by additional information received on April 2, 2007, and April 10, 2007, in which you request a waiver of the 60-day rollover requirement described 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, age 70, represents that he received a distribution from IRA X totaling Amount B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made by his financial advisor, a representative of Company C, which led to Amount B being placed into a non-IRA account. Taxpayer A further represents that Amount B has not been used for any other purpose.

IRA X was in an IRA annuity that matured on Date 2. In order to obtain a higher interest rate, Taxpayer A authorized his financial advisor at Company C to send a letter to Company D requesting that the annuity be liquidated and the proceeds be sent to Company C to be deposited in an IRA to be set up with Company C.

By letter dated Date 1 a representative of Company C instructed Company D to have IRA X liquidated and the proceeds payable to Company C as custodian for Account E. On Date 3, Amount B was credited to Account E. The financial statements from Company C show Account E as "Taxpayer A's IRA" and Taxpayer A, at all times, believed it was an IRA. However, in fact, Account E was not an IRA. No one at Company C's office or its home office noticed that Account E was not an IRA until Taxpayer A was preparing his tax returns for and realized that Account E was a regular certificate of deposit. Taxpayer A then brought the error to the attention of his financial advisor.

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

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)(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 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.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to an error by a representative of Company C which led to Amount B 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 B from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met such contribution will be considered a rollover contribution within the meaning of section 408(d) 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 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.

If you have any questions about this ruling please contact xxxxxxxxxxxxxxxx, at

Sincerely yours,

*Donzell Littlejohn*

xxxxxxxxxxxxxxxxxx, Manager  
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437