



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

SEP 12 2007

Number: **200749018**  
Release Date: 12/7/2007

UIL: 408.03-00

T:EP:RA:UK

Legend:

Taxpayer A	=
IRA X	=
Amount D	=
Amount E	=
Company B	=
Company C	=
Individual F	=
Individual N	=
Account G	=
Company P	=
Company R	=

Dear :

This is in response to a request dated February 8, 2007, as supplemented by correspondence dated, May 7, 2007, May 18, 2007, May 31, 2007, June 11,

2007, June 19, 2007, and July 11, 2007, submitted on your behalf by your authorized representative for a letter ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Your correspondence dated August 27, 2007 corrected statements that you made to the Service in correspondence dated August 14, 2007.

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

Taxpayer A maintained an individual retirement arrangement, IRA X, with Company B. Taxpayer A represents that in December 2000, she and Individual F, the owner of Company C, discussed expenses relating to IRA X and ultimately decided to surrender IRA X when such IRA would not be fully subject to a surrender penalty, which would not occur until 2004 and 2005. Company C is described as a registered investment advisor.

Taxpayer A represents that on August 15, 2001, she established Account G, a non-IRA account, through Company C to hold certain non-retirement funds. Account G is described as a non-qualified brokerage account. Company R, which is described as a broker-dealer, issues the account statements for accounts, such as Account G, that are cleared through Company P. Company P is described as a "clearing house" and it is represented that it can act as a custodian for IRAs. Taxpayer A states that she and Individual F met at various times during 2001 through 2003, and that they occasionally talked about IRA X. Taxpayer A further states that on November 4, 2004, she and Individual F met and talked extensively about surrendering IRA X and reinvesting those funds in mutual funds in a qualified IRA.

It is represented that in December 2004, Individual N, a Company C client service coordinator, based on instructions received from Individual F, prepared the paperwork so that Taxpayer A could surrender part of IRA X. Individual N was never involved in any other meetings between Taxpayer A and Individual F. Individual F states that due to her lack of communication with Individual N, she failed to advise Individual N as to the type of account Taxpayer A desired. Individual N states that based upon the instructions she received from Individual F, she assumed that Taxpayer A desired to surrender IRA X and deposit those funds into Account G. Individual F admits that she did not review the forms prepared by Individual N prior to having such submitted to Company B. Taxpayer A signed the forms without realizing that she not signing a form to establish an IRA.

Documentation submitted by Taxpayer A shows that on December 27, 2004, Company B issued a check to her in the amount of Amount D. Taxpayer A states that Amount D was the maximum amount she could withdraw from IRA X without incurring a surrender penalty. Taxpayer A states that she deposited the check into her checking account and on January 6, 2005, wrote a check from her

personal checking account payable to Company P in the amount of Amount D. Taxpayer A states that she presented the check to Company C and that such check was deposited into Account G, her non-IRA account, the only account Taxpayer A had with Company P.

In April 2005, Taxpayer A states that she followed the same procedure with respect to the balance in IRA X, Amount E. Taxpayer A states that Individual N prepared the surrender form which Taxpayer A signed and which was sent to Company B. Individual F states that she did not review this form before it was sent to Company B. Documentation submitted by Taxpayer A shows that on May 3, 2005, Company B issued a check to her in the Amount E. Taxpayer A deposited this check into her personal checking account and on May 16, 2005, presented the check, payable to Company P, for deposit into Account G. The account number on the personal check and the deposit form is for Account G. Individual N represents that she wrote the Account G account number on Taxpayer A's checks as this was the only account Taxpayer A had with Company C.

Taxpayer A states that she and Individual F had review meetings in April 2005 (prior to the deposit of Amount E into Account G) and in August 2005 and neither Taxpayer A nor Individual F noticed that the IRA funds had been deposited into Account G. Taxpayer A states that she first noticed that the funds from IRA X were not in an IRA when she received notice from the Internal Revenue Service in June 2006 indicating that she failed to include Amount D in her income for tax year . Taxpayer A states that upon receiving this notice from the Service, she immediately contacted Individual F to inquire as to why her contribution of Amount D failed to qualify as a valid rollover contribution. Individual F contacted Company R who suggested that a valid rollover account be established immediately in the hope that this IRA could be used to correct the failed rollover from IRA X. Documentation submitted by Taxpayer A shows that she established a rollover IRA through Company C in June 2006, to which a distribution from her former employer's Code section 401(k) plan was made.

Taxpayer A states that she has not used any of the funds from IRA X and that such funds continue to be held in Account G, as supported by account statements submitted by Taxpayer A covering the deposits of the IRA X funds to date. Taxpayer A states that she failed to complete a rollover of IRA X into another IRA within the applicable 60-day time period due to miscommunication and errors that occurred within Company C because Individual F failed to properly instruct Individual N that Taxpayer A wanted to accomplish a tax-free rollover of IRA X into a new IRA at Company C. Taxpayer A further states that it was her intention to establish an IRA with Company C with the funds from IRA X although no documentation has been submitted that demonstrates that an IRA was established or attempted to be established with Company C prior to the distributions from IRA X or within the 60-day time period after the distributions of

Amount D and Amount E, respectively from the IRA Taxpayer A maintained with Company B.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D and Amount E from IRA X.

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)(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 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, 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 she failed to complete a rollover of Amount D to an IRA within the 60-day rollover period due to Individual's F error in failing to properly instruct Individual N that Taxpayer A wanted to accomplish a tax-free rollover of Amount D into a new IRA with Company C.

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. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all of the requirements of Code section 408(d)(3), except the 60-day rollover requirement, are met with respect to the contribution, Amount D will be considered a valid rollover contribution within the meaning of Code section 408(d)(3).

Taxpayer A received two distributions from IRA X within the twelve month period beginning on December 27, 2004. Code section 408(d)(3)(B) denies favorable rollover treatment for any amount that is received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount from an IRA which was not included in gross income because it was rolled over into another IRA. The Service has waived the 60-day rollover period for the distribution of Amount D from IRA X which will permit Taxpayer A to complete a rollover of Amount D to another IRA provided such amount is contributed to an IRA within 60-days from the date of this letter. In waiving the 60-day rollover requirement for Amount D the Service is concluding that Amount D is or will be a valid rollover contribution under Code section 408(d)(3), which means that Taxpayer A does not have to include such amount in gross income for the tax year ( ) in which the distribution was made. Amount E was received by Taxpayer A on a date that was within the one-year period beginning December 27, 2004, the date of the distribution of Amount D. As Taxpayer A is considered, by virtue of the waiver of the 60-day rollover requirement with respect to Amount D, to have received an amount from an IRA which was not included in gross income because it was rolled over to another IRA under Code section 408(d)(3), she is precluded by the one-year rule of Code section 408(d)(3)(B) from rolling over Amount E to an IRA.

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.

This ruling does not express an opinion as to whether Company P is qualified to serve as a custodian for IRAs under Code section 408; nor does this ruling express any opinion as to whether the rollover of the amounts from Taxpayer A's former employer's Code section 401(k) plan satisfied the requirements of Code section 402(c)(3)(A) and/or Code section 401(a)(31).

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions concerning this letter, please contact  
SE:T:EP:RA:T2.

Sincerely yours,

~~JOYCE E. FLOYD~~

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter  
Notice of Intention to Disclose