



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200840053

JUL - 7 2008

Uniform Issue List: 408.03-00

T. EP. RAITY

Legend:

Taxpayer A            =  
Bank B                =  
Bank C                =  
IRA X                  =

Amount E            =  
Date G                =  
Date H                =

Dear

This is in response to your request received by this office on April 4, 2007, as supplemented by additional correspondence dated February 7, 2008, and February 8, 2008, for 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, age 88, represents that he received a distribution from IRA X totaling Amount E. Taxpayer A asserts that his failure to accomplish a rollover of Amount E within the 60-day period prescribed by section 408 (d)(3) of the Code was due to Bank C improperly depositing Amount E into a nonqualified account. Taxpayer A represents that Amount E has not been used for any other purpose and remains in Bank C.

Taxpayer A maintained IRA X with Bank B and on Date G, an open tax year, received a distribution of Amount E from IRA X. On the same day, Taxpayer A informed an officer of Bank C that he had taken a distribution (represented by a check made payable to Taxpayer A with "IRA" noted on the check) of Amount E from his IRA X with Bank B and wanted to open a new IRA with Bank C. However, contrary to Taxpayer A's instructions, Bank C opened a non-IRA certificate of deposit.

On Date H, Taxpayer A's tax preparer discovered that Amount E had been put into a non-IRA certificate of deposit instead of an IRA. In a statement included with this request, the Senior Vice President of Bank C indicated that based on their investigation it is possible that Bank C made an error in depositing Amount E into a non-IRA certificate of deposit and that the account continued to be reinvested as a CD at each maturity, without any action on the part of Taxpayer A. Taxpayer A continued to make normal annual required minimum distributions.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to Amount E.

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 or 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)(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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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.

Revenue Procedure 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 and documentation submitted by Taxpayer A is consistent with his assertion 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 by Bank C which led to amount E being placed in 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. Taxpayer A is granted a period of 60-days from the issuance of this ruling letter to contribute Amount E into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of Code section 401(a)(9) minimum required distributions.

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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 hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact  
at

Sincerely yours,

A handwritten signature in cursive script that reads "Donzell Littlejohn".

Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted copy of this letter