



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200903104

SEP 23 2008

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

ROTH IRA X =

IRA Y =

Amount A =

Amount B =

Company A =

Company B =

Company C =

Agency D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear:

This is in response to your request dated , 2007, as supplemented by correspondence dated , 2008 and , 2008, in which you request a waiver of the 60-day rollover requirements contained in section 408(d)(3) and 408A(a) 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 65, represents that on Date 1, 2002, she received a distribution from ROTH IRA X totaling Amount A from Company C. Taxpayer A also represents that on Date 2, 2002, she received a distribution from IRA Y totaling Amount B from Company C. Taxpayer A asserts that her failure to accomplish rollovers of Amount A and Amount B within the 60-day period prescribed by section 408(d)(3) was caused by the failure of Company A to follow her express instructions regarding the deposit of the funds and the subsequent embezzlement of Amounts A and B by Company A.

After receiving Amounts A and B, Taxpayer A forwarded these amounts to Company A intending to roll over these amounts into similar accounts to be maintained with Company A. Amounts A and B were not properly transferred to IRA rollover accounts and on Date 3, 2002, Taxpayer A requested that the funds be transferred to Company B so that rollover individual retirement could be maintained with Company B. When her original request was not carried out, Taxpayer A reiterated her request on Date 4, 2002. Both Date 3 and Date 4 were within the applicable 60 day rollover periods. Not wishing to violate the 60 day rollover periods applicable to Amounts A and B, Taxpayer A borrowed funds sufficient to return Amount A and Amount B to Company C to roll over into similar individual retirement accounts to be maintained with Company C. On Date 5, 2002, Taxpayer A mailed to Company C the rollover contribution from ROTH IRA X totaling Amount A. On Date 6, 2002, Taxpayer A mailed to Company C the rollover contribution from IRA Y totaling Amount B. Taxpayer A mailed both Amounts A and B within the applicable 60-day rollover periods. However, these amounts were recorded as received after the expiration of the 60 day period. Neither Taxpayer A nor Company C have any written records evidencing when Amounts A and B were mailed to Company C although Taxpayer A has represented to the Service that the mailings occurred on Dates 5 and 6 above.

Amounts A and B were never returned to Taxpayer A by Company A. A complaint was filed by Agency D against Company A for fraudulent investment schemes, and Company A was subsequently placed into receivership.

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

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)(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.

Code section 408A(a) provides that except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

Code section 408A(c)(6)(A) provides that "no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution".

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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount A and Amount B within the 60-day periods prescribed by section 408(d)(3) and 408A(e) was caused by the failure of Company A to follow her express instructions regarding the deposit of the funds and the subsequent embezzlement of Amounts A and B by Company A.

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 A and Amount B from ROTH IRA X and IRA Y, respectively. The rollover of Amount A and Amount B by Taxpayer A into the ROTH IRA and the traditional IRA maintained with Company C will be considered rollover contributions within the meaning of section 408(d)(3) and 408A(a) 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.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (ID) at (phone) or (fax). Please address all correspondence to SE:T:EP:RA:T.

Sincerely yours,

, Manager
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose