



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

200907037

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 19 2008

Uniform Issue List: 408.03-00

SE:T:EP:RA:T4

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LEGEND:

Taxpayer A	= XXXXXXXXXXXXXXXX
Individual S	= XXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX
Account F	= XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXX
Bank C	= XXXXXXXXXXXXXXXX
Date1	= XXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXX

Dear XXXXXX

This is in response to your letter dated March 8, 2008, as supplemented by correspondence dated August 10, August 11, and September 25, 2008, 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 penalty of perjury in support of the ruling requested:

Taxpayer A, age 58, represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Bank C. Taxpayer A further represents that Amount D has not been used for any other purpose.

In support of this request, Taxpayer A represents that IRA X which was maintained by Bank C matured on Date 1. On that same day Taxpayer A went to Bank C to roll IRA X over to another IRA at Bank C to earn a higher rate of return on her investment. Taxpayer A states that she instructed a representative of Bank C to roll Amount D into an IRA certificate of deposit. The Bank C officer who handled the transaction placed Amount D into Account F, a non-IRA certificate of deposit, instead of a traditional IRA certificate of deposit. It was not until Taxpayer A began to prepare her income tax return that the Bank C error was discovered which was after the 60-day rollover period had expired.

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Individual S, an Assistant Branch Manager of Bank C, states in a letter of Date 2, that Taxpayer A visited Bank C on Date 1 with the intention of rolling over her existing IRA certificate of deposit, IRA X, into another IRA account. The Bank C representative misunderstood Taxpayer A's request and transferred IRA X into Account F, a non-IRA account. Individual S acknowledged that this was a Bank C error.

Based on the 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 the distribution of Amount D 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 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.

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

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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 her assertion that her failure to complete a timely rollover of Amount D was caused by an error committed by Bank 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 a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day 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.

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.

If you have any questions regarding this letter, please contact XXXXXXXXXXXX, ID Number XXXXXXXXXXXX at XXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

Donzell H. Littlejohn
Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose