



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

200909077

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 03 2008

UIL No. 408.03-00

Legend:

Taxpayer A =

Date 1 =

Date 2 =

Amount A =

Amount B =

Amount C =

IRA X =

IRA Y =

Account Z =

Company A =

Financial Institution A =

Dear :

This is in response to your letter dated April 24, 2008, supplemented by correspondence dated June 17, 2008, submitted on your behalf by your authorized representative, 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").

Under penalty of perjury, Taxpayer A submits the following facts and representations in support of the ruling request:

Taxpayer A, age 60, represents that he received distributions totaling Amount C from IRAs X and Y. 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

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due to a mistake made by Financial Institution A, which led to amount C being placed in a non-IRA account. Taxpayer A further represents that Amount C has not been used for any other purpose.

Taxpayer A maintained IRAs X and Y with Company A. On Date 1, Taxpayer A withdrew Amount A from IRA X and Amount B from IRA Y. Taxpayer A represents that he intended to transfer the distributed assets into a safer vehicle by rolling Amount C over into an IRA Certificate of Deposit (CD) with Financial Institution A. On Date 2, Taxpayer A met with a customer service representative of Financial Institution A and indicated that he intended to open an IRA CD with the distributed assets. However, the customer service representative instead opened Account Z, a non IRA Account. Taxpayer A realized that Amount C was deposited in a non-IRA account when he received a renewal notice from Financial Institution A. Documentation submitted with this letter ruling request from Financial Institution A is consistent with Taxpayer A's assertion that it was his intention to open an IRA CD, but that the customer service representative deposited Amount C in a non-IRA account.

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

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 (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 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 a mistake made by Financial Institution A, which led to Amount C 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 C from IRAs X and Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into 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 C 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.


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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 is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at *** or *** (FAX). Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for 

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

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: