



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200952063

SEP 29 2009

U.I.L. 408.03-00

XXXXX  
XXXXX  
XXXXX

SETTLEMENT

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Bank C = xxxxx

Amount N = xxxxx

Form Z = xxxxx

Bank D = xxxxx

Account S = xxxxx

Account T = xxxxx

Account U = xxxxx

Amount O = xxxxx

Amount P = xxxxx

Amount Q = xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

xxxxx

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Date 2 = xxxxx

Date 3 = xxxxx

Dear xxxxx:

This is in response to your letter dated February 6, 2008, as supplemented by correspondence dated May 10, May 12, August 7 and August 27, 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 ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 76, represents that he received a distribution from IRA X at Bank C totaling Amount N, of which he intended to roll over Amount O to another IRA at Bank D. 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 due to the failure of Bank C and Bank D to carry out his intended instructions, and that as a result of ongoing memory problems due to a prior stroke and concern about a possibly cancerous skin lesion, he failed to notice the mistake until after the expiration of the 60-day period.

Taxpayer A represents that he maintained IRA X at Bank C. On Date 1, Taxpayer A requested that Bank C transfer Amount N, the entire account balance of IRA X, to Account S at Bank D. On Date 2, the day following Date 1, Taxpayer A's entire account balance in IRA X was transferred by wire transmission to Bank D. Taxpayer A intended that Bank D maintain the transferred funds as IRA funds. However, Account S, the account listed on the transfer request was not an IRA. When received by Bank D, the funds were not deposited into an IRA account.

Taxpayer A made his request for the transfer by completing Form Z, the general form used by Bank C to process IRA withdrawals. A copy of the Form Z that Taxpayer A executed was submitted as part of this ruling request.

On Date 2 Taxpayer A executed a wire transfer agreement with Bank D to authorize wire transmission of funds to or from his account(s) maintained at Bank D. In addition, Taxpayer A opened three new accounts which could be accessed under the terms of the agreement. Upon the transfer of Amount N to Bank D, Amount N was allocated among the three new accounts: Accounts S, T and U. Accounts S and T were certificates of deposit (CD) with identical terms, and which each received one-half of Amount O. Account U, a money market account, received the remainder of Amount N. Taxpayer A represents that by transferring Amount O into Accounts S and T, he intended on Date 2 to make a trustee-to-trustee transfer of most of his investment in IRA X to an IRA investment at Bank D. Taxpayer A represents that he did not intend that the

xxxxx  
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remainder of Amount N allocated to Account U would be treated as a rollover contribution to an IRA.

On Date 3, Taxpayer A went to Bank D to request withdrawal of Amount P to satisfy his required minimum distribution from the transferred funds and he discovered that Accounts S and T were not IRA CDs.

Taxpayer A further represents that he suffers from periodic lightheadedness and dizziness and has some problems with his speech and memory as a result of a stroke that occurred approximately seven years prior to Date 1. He also represents that during the two month period prior to Date 1 he became aware of a possible cancerous skin lesion for which he received treatment approximately one month after Date 1. Taxpayer A asserts that as a result of the combination of his ongoing memory problems and his preoccupation with his skin condition, (1) he failed to carry out the rollover transaction that he intended to accomplish and (2) he failed to recognize his mistake until after the 60-day period had expired.

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount N 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) 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)(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 may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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).

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.

Taxpayer A has stated that he gave instructions to Bank C which, if followed, would have resulted in the timely rollover of IRA X. However, the documentation submitted shows that Taxpayer A instructed Bank C to transfer Amount N to Account S, a non-IRA account at Bank D. Further, when Amount N was transferred to Bank D, it was divided and deposited into Account T and Account U in addition to Account S, all three of which were non-IRA accounts. A letter from Bank D indicates that when it received the wire transfer from Bank C, it was unaware that Amount N constituted proceeds from an IRA, and that it set up the three non-IRA funds at the request of Taxpayer A. Accordingly, Taxpayer A has not shown that the failure to complete a timely rollover was a result of any error on the part of a financial institution. In addition, Taxpayer A has not shown that either his memory problems, which were long standing and which had not worsened during the period in question, or his concerns for his skin condition caused his failure to carry out the intended rollover at the time of the transaction, or his failure to notice the error during the 60 days following.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount N from IRA X.

This ruling assumes that IRA X satisfies the qualification requirements of section 408 of the Code at all times relevant to this transaction.

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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at xxxxx, or by fax at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: xxxxx  
xxxxx  
xxxxx