



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201001026

OCT 16 2009

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

Individual B =

IRA X =

Company C =

Company D =

Account B =

Amount A =

Date 1 =

Date 2 =

Dear

This is in response to your request dated _____, as supplemented by correspondence dated _____, 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 34, represents that he received a distribution from IRA X totaling Amount A on Date 1. Taxpayer A asserts that his failure to accomplish a

rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Individual B, an employee of Company C. Taxpayer A further represents that Amount A has not been used for any other purpose.

When Taxpayer A changed jobs in 2008, he requested and received a distribution from IRA X on Date 1, with the intention of rolling over the funds into another eligible IRA account. As a new Company D employee, Taxpayer A was offered financial advice by Individual B, an employee of Company C, which performed financial and other administrative services for Company D employees. Taxpayer A advised Individual B of his intention to roll over the funds he had withdrawn from IRA X. Nevertheless, Individual B directed Taxpayer A to electronically complete an account application form Individual B forwarded to him that could not be used to open an IRA. Relying on the directions that he was given by Individual B and thinking he was setting up an IRA, Taxpayer A completed and submitted the account application form. As a result of using that inappropriate form, however, on Date 2, the funds he had withdrawn from IRA X were transferred to Account B, a taxable individual brokerage account. Taxpayer A did not become aware that Amount A had been deposited into a non-IRA account, an action directly precipitated by Individual B's erroneous advice, until 200 when he received a Form 1099-DIV for Account B.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the Service) waive the 60-day rollover requirement with respect to the distribution of Amount A.

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.

Revenue Procedure 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 timely rollover was caused by an error made by Individual B, an employee of Company 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 A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A 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 A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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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 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 wish to inquire about this ruling, please contact (ID#) at () . Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,


for Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose