



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201002049

OCT 22 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:T2

Legend:

Taxpayer A = *****

IRA X = *****

IRA Y = *****

Account Z = *****

Amount 1 = *****

Amount 2 = *****

Amount 3 = *****

Date 1 = *****

Date 2 = *****

Dear *****:

This is in response to your ruling request dated July 20, 2009, 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 73, represents that he made two separate withdrawals from IRA X. He withdrew Amount 1 on Date 1 and Amount 2 on Date 2. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code resulted from the agitated state of his thinking, which caused him to inadvertently write the incorrect account number on the check to be deposited.

Taxpayer A represents that he was the owner of IRA X, a qualified individual retirement arrangement ("IRA") established and maintained under the rules of section 408 of the Code. Taxpayer A represents that on Dates 1 and 2 when he received distributions of Amount 1 and Amount 2 from IRA X, he placed the funds into his personal checking account with the intent to use them to help his sister save her house from a forced sale. Shortly thereafter, he changed his mind and decided to deposit Amount 3, a portion of Amount 2 into IRA Y. However, Taxpayer A wrote the incorrect account number on the check and the funds were accidentally deposited into Account Z, a non-IRA account instead of into IRA Y. Taxpayer A asserts that his mistake in writing the wrong account number on the check was a result of the agitated state of his thinking due to the threat to his sister's house. Amount 3 remains in Account Z. The error was discovered in April 2009.

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

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)(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) 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 the documentation submitted in this case indicates that at the time Taxpayer A withdrew Amounts 1 and 2 from IRA X, he did not intend to execute an IRA rollover. However, within 60 days of the distribution, Taxpayer changed his mind and attempted to execute a rollover of Amount 3. Taxpayer A failed to accomplish a rollover within the 60-day period because he wrote the incorrect account number on the check. Accordingly, the bank deposited the funds into Account Z, Taxpayer A's non-IRA investment account.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. Although the Taxpayer represented that he had intended to deposit the funds into an IRA, the Taxpayer admitted that his own error caused the failure of the deposit. Taxpayer A has not provided sufficient evidence that any of the factors in Revenue Procedure 2003-16 caused him to fail to accomplish a timely rollover.

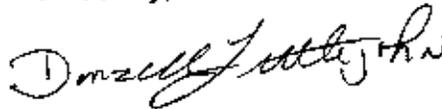
Accordingly, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA X.

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 ***** (Government Identification Number (**-****)) by phone at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose