



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201007078

NOV 23 2009

UIL No. 408.03-00

SE: T: EP: RA: T/

Legend:

Taxpayer A =

IRA X =

IRA Y =

Bank M =

Bank N =

Company O =

Individual B =

Individual C =

Amount A =

Amount B =

Amount C =

Amount D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dea' :

This is in response to a letter dated , submitted on your behalf by your authorized representative, as supplemented by correspondence dated and 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 62, represents that, on Date 1, funds from IRA X totaling Amount A were transferred by Individual C without his knowledge or consent to IRA Y in a trustee-to-trustee transfer. After he became aware of the transfer, Taxpayer A demanded the money being held in IRA Y. Taxpayer A received a check totaling Amount B (Amount A minus a surrender fee Company O charged). Taxpayer A asserts that his failure to accomplish a rollover of Amount B within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake by his legal advisor, Individual B.

Sometime between Date 2 and Date 3, Taxpayer A represents that he discovered that funds from IRA X totaling Amount A had been transferred without his knowledge or consent to IRA Y. Taxpayer A subsequently demanded that all of the transferred funds be released to him. In response to that demand, Company O issued a check to Taxpayer A on Date 4 totaling Amount B (Amount A minus a surrender fee Company O charged for surrendering an annuity the original purchase of which had not been authorized by Taxpayer A). Taxpayer A represents that, although he is engaged in an on-going effort to recover the surrender fee Company O charged, at present he is only interested in rolling over Amount B. Taxpayer A asserts that his failure to accomplish a rollover of Amount B within the required 60-days was due to a mistake by his legal advisor, Individual B who, not realizing that the check received by Taxpayer A on Date 4 represented funds paid from an IRA and concerned that cashing the check could be construed as full settlement with Company O, advised Taxpayer A not to cash the check. Taxpayer A was not advised of the need to deposit the check for Amount B until after the 60-day rollover period had expired. On Date 5, Taxpayer A deposited Amount C into IRA certificates of deposit with Bank M and, on Date 6, deposited Amount D into an IRA with Bank N. Amounts C and D total Amount 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 B.

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 a mistake on the part of his legal advisor, Individual B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount B. 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 B 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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (ID No. 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

cc: