



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201012053

DEC 30 2009

U.I.L.: 408.03-00

SE:T:EP:RA:T4

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

IRA Y = xxxxx

Amount N = xxxxx

Financial Institution C = xxxxx

Financial Institution D = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = xxxxx

Dear xxxxx:

This is in response to a request submitted on your behalf by your authorized representative dated June 4, 2009, as supplemented by correspondence dated August 31, 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 penalties of perjury in support of the ruling requested:

Taxpayer A, age 50, maintained a Simplified Employee Pension Plan (SEP), described in section 408(k) of the Code, for employees of his small business. He maintained an SEP-Individual Retirement Arrangement (IRA X) for purposes of participating in the SEP as an owner-employee.

IRA X was maintained by Financial Institution C. Taxpayer A intended to roll over the total account balance (Amount N) of IRA X into a new IRA at Financial Institution D and asserts that his failure to accomplish a rollover of Amount N as intended within the 60-day period prescribed by section 408(d)(3) of the Code was due to error by Financial Institution D.

Taxpayer A represents that prior to Date 1, he received instructions from Financial Institution D on how to transfer funds from IRA X to a new SEP-IRA to be opened at Financial Institution D. Financial Institution D sent Taxpayer A the appropriate forms to complete.

Financial Institution C issued to Taxpayer A a check dated Date 1, for Amount N. He, in turn, mailed a personal check dated Date 2, for Amount N payable to Financial Institution D together with a completed SEP-IRA Plan Authorization Form and a completed SEP-IRA New Account Form. Documentation shows that the listing of Taxpayer A's business and the name of his spouse in addition to his name on the check made it unclear for whom an IRA was being requested. In addition, documentation shows that one or more portions of the above-described documents was completed improperly. It is represented that Financial Institution D required that such document(s) be determined acceptable under its SEP-IRA application procedures before Financial Institution D would establish an IRA, as described, in Taxpayer A's name, but that Financial Institution D failed to inform Taxpayer A that the documents were not completed properly.

In response to Taxpayer A's application package, Financial Institution D mailed Taxpayer A a letter dated Date 3, approximately 30 days after Date 1. In the letter, Financial Institution D, having determined Taxpayer A's check to be unacceptable as drafted, returned it to Taxpayer A and requested that he reissue it. The letter provided that upon receipt of detailed allocation instructions and identification of the tax year of the contribution, along with the reissued check, Financial Institution D would invest the assets (Amount N). Taxpayer A reissued the check for Amount N and Financial Institution D received such check within the 60-day rollover period.

The letter that returned Taxpayer A's check to him did not return the authorization form or the account form that Taxpayer A had submitted with such check and did not make mention of either document having incorrectly completed fields.

It is represented that Financial Institution D provided a new application to Taxpayer A prior to the expiration of the 60-day period for rolling over Amount N into an IRA but that Financial Institution D did not provide adequate instructions as to why or how the application was to be completed and resubmitted.

As a result of the failure of Financial Institution D to provide timely and sufficient information to Taxpayer A, the procedures necessary for the establishment of a SEP-IRA in the name of Taxpayer A at Financial Institution D were not completed until shortly after the expiration of the 60-day period for rolling over Amount N into an IRA.

Documentation shows Financial Institution D acknowledged that missteps in the processing of Taxpayer A's SEP-IRA application resulted in unreasonable delay in the approval of such application.

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

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.

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) of the Code, 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 you submitted is consistent with your assertion that your failure to accomplish a timely rollover of Amount N of IRA X was caused by errors made by Financial Institution D.

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 N from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount N 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 N 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 expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

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. 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