



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201015041

JAN 21 2010

Uniform Issue List: 408.03-00

SE: T: EP: RA: TI

Legend:

Taxpayer A	=
IRA B	=
Bank C	=
Financial Institution D	=
IRA E	=
Financial Institution F	=
IRA G	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated October 15, 2009, as supplemented by additional information dated December 1 and 8, 2009, and January 7, 2010, from 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 have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 45, represents that she took a distribution from IRA B totaling Amount 1. Taxpayer A asserts that her 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 Financial Institution D to follow Taxpayer's instructions. Taxpayer A further asserts that Amount 1 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code with Bank C. In October, 2008, Taxpayer A met with a representative of Financial Institution D for investment recommendations for IRA B. Financial Institution D maintained a branch office at Bank C. The representative of Financial Institution D recommended that Taxpayer A invest Amount 1 in a variable annuity contract with Financial Institution F. In order to facilitate this transaction, on October 24, 2008, Taxpayer A signed documentation to open IRAs with both Financial Institution D and Financial Institution F. On this same date, Taxpayer A received a distribution check of Amount 1 from IRA B and presented the check for deposit into IRA E and subsequent transfer to an IRA annuity (IRA G) with Financial Institution F. IRA E is a shell account that is set up in order to facilitate the purchase of the annuity through Financial Institution D's annuity order system, which is used as the electronic system through which annuity purchases are transacted with Financial Institution F. The funds are transferred directly from the IRA at Financial Institution D to an IRA at Financial Institution F.

On January 30, 2009, Taxpayer A met with the representative of Financial Institution D to review her IRA investments and it was discovered that the distribution check from IRA B was never forwarded for deposit into IRA E and subsequent transfer into IRA G. After determining that the October 24, 2008 check had apparently been lost, a new check was issued on January 30, 2009, deposited into IRA E on February 4, 2009, and transferred to annuity IRA G on February 5, 2009. Financial Institution D has provided a written acknowledgement that their representative did not follow Taxpayer A's instructions on October 24, 2008, which led to the failure of the 60-day rollover requirement.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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.

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) 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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to the failure of Financial Institution D to follow her instructions.

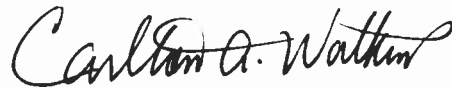
Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement have been met, the deposit of Amount 1 into IRA E will be considered a rollover contribution within the meaning of section 408(d)(3).

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 (I.D. #), at () .

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: