



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201023072

MAR 19 2010

Uniform Issue List: 408.03-00

SEITEP: RA: T2

Legend:

Taxpayer A = *****

IRA X = ***** IRA, Account Number *****

Date 1 = ***** **, ****

Date 2 = ***** **, ****

Financial Representative Y = *****

Financial Representative Z = *****

Financial Institution = *****

Amount B = \$*****

Amount C = \$*****

Dear *****:

This is in response to a letter dated ***** **, **** submitted on your behalf by 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 ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age **, asserts that on Date 2 he received a distribution from IRA X of Amount C, and that Taxpayer A's failure to accomplish a rollover of Amount C was due to the error of Financial Institution in erroneously making the distribution

and in failing to follow Taxpayer A's intent and instructions. Taxpayer A has represented that he has not used Amount B for any other purposes.

In October, ****, Taxpayer A met with Financial Representative Y of Financial Institution to discuss a new "financial plan". Taxpayer A had an automatic required minimum distribution ("rmd") scheduled to take place on Date 2, this automatic distribution had taken place every year since his reaching age 70 ½. Taxpayer A then agreed to move up his scheduled rmd distribution from Date 2 to Date 1. Financial Representative Y agreed with Taxpayer A that the **** rmd would be taken by arranging the transfer of Amount B from IRA X into Taxpayer A's non sheltered account at Financial Institution. This transaction took place on Date 1. The Date 1 transaction satisfied Taxpayer A's year **** minimum required distribution from IRA X. However, on Date 2, Financial Representative Z, Taxpayer A's regular financial advisor, permitted the originally scheduled **** rmd on Date 2. Financial Representative Z and Financial Institution overlooked the fact that Amount B had already been distributed on Date 1, and in error, approved a second transfer from IRA X equal to Amount C into Taxpayer A's revocable trust at Financial Institution. The Date 2 transfer of Amount C was not authorized by Taxpayer A. Taxpayer A did not realize Financial Representative Z's mistake until Taxpayer A began preparing his federal income tax return, which was after the expiration of the 60-day rollover period. The Date 2 transfer of Amount C has not been used for any purpose.

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

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)(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)(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 *****, 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 documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that on Date 2 he received a second rmd from IRA X of Amount C, and that Taxpayer A's failure to accomplish a rollover of Amount C was due to the error of Financial Institution in erroneously making the distribution, and contrary to Taxpayer A's intent and instructions.

Page 4 of 4

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 the Date 2 Amount C from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to the Date 2 Amount C to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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
Law Specialist Employee Plans Technical Group 2 at
at . Please address all correspondence to

Tax
. or via fax

Sincerely yours,



Donzel H. Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

CC:

