



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

20103104

MAY 14 2010

Uniform Issue Code: 408.03-00

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T: EP: RA: TY

Legend:

- Taxpayer A = XXXXXXXXXXXXXXXX
- Individual B = XXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXX
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- Amount D = XXXXXXXXXXXXXXXX
- Bank T = XXXXXXXXXXXXXXXX
- Financial Institution C = XXXXXXXXXXXXXXXX
- Date 1 = XXXXXXXXXXXXXXXX
- Year M = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX

This is in response to your ruling request dated November 1, 2009, supplemented by a letter dated December 14, 2009, submitted 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 ("Code") for a distribution from IRA X.

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

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Taxpayer A, age 51, represents that on Date 1 he received a distribution totaling Amount D from IRA X. Taxpayer A asserts that his 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 Individual B, an employee of Financial Institution C, to follow his instructions which led to Amount D being deposited into a non-IRA account. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A maintained IRA X with Bank T. Bank T closed and required Taxpayer A to take a distribution from IRA X. Taxpayer A states that the payout was in the form of a check for Amount D. Taxpayer A instructed Individual B, his investment manager of many years, to take the check and roll it over into a pre-existing IRA maintained at Financial Institution C. Instead Individual B deposited Amount D into Taxpayer A's joint non-IRA brokerage account. Taxpayer A was unaware that Amount D had not been deposited into an IRA until Year M when he began preparing his federal income tax return.

In a letter dated December 20 Individual B, states that he misunderstood Taxpayer A's verbal instructions on how to invest Amount D and that he did not deposit Amount D into an IRA at Financial Institution C, but erroneously deposited Amount D into Taxpayer A's joint non-IRA brokerage account with Financial Institution C.

Based on the facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

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 account is maintained if:

- 1) 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 he receives the payment or distribution; or
- 2) the entire amount received (including money and 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

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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 one-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) 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 and documentation submitted by Taxpayer A, is consistent with his assertion that his failure to accomplish a timely rollover was due to the failure of Individual B to follow the instructions given by Taxpayer A, which led to Amount D being deposited into a non-IRA account.

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 D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D 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 D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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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 ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact XXXXXXXX, ID Number XXXXXX at XXXXXXXXXXXX. Please address all correspondence to

Sincerely yours,



Laura B. Warshawsky, Manager,
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose