



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201044029

AUG 11 2010

SE:T:EP:RA:T2

Uniform Issue List: 408.03-00

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***** ** *****

Legend:

Taxpayer A = ***** ** *****

IRA X = Account No. *****, maintained by *****
***** ** on behalf of ***** ** *****

Amount A = \$***,***

Financial Institution A = ***** ** (***** **)

Financial Institution B = ** ***** **

Financial Advisor A = * *****
***** ** Advisors, LLC

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

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

Dear **, *****,

This is in response to your request dated ***** **, ****, as supplemented by correspondence dated **** **, ****, 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 79, represents that he received a distribution from IRA X of Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error of Financial Institution B. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A maintains IRA X with Financial Institution A. In 20 , Taxpayer A held several consultations with his financial advisor, Financial Advisor A, regarding current interest rates in his Individual Retirement Account, IRA X. Financial Advisor A advised Taxpayer A to roll over funds in his IRA into another IRA with higher interest rates. Taxpayer A decided to roll over a portion of IRA X into a local credit union offering higher interest rates. Financial Advisor A instructed Taxpayer A that he had to complete the rollover within 60 days of receiving the funds.

Acting upon Financial Advisor A's instructions, Taxpayer A received Amount A from Financial Institution A in the form of a check on Date 1 and went to Financial Institution B the next day, Date 2, intending to make a deposit into another IRA account. Taxpayer A did not have any taxes withheld from Amount A at the time.

Taxpayer A represents that on entering Financial Institution B, he explained to the bank clerk that he wanted to open an IRA CD paying a certain interest rate with Amount A. The bank clerk completed the application form for Taxpayer A, handwriting all the required terms of the form. However, the bank clerk failed to mark a small box that would indicate that the account be opened as an IRA rather than a non-IRA. Once the bank clerk completed the application form, the bank clerk offered the form to Taxpayer A for his signature. Relying on the bank clerk's expertise, Taxpayer A signed the form, made the deposit and left Financial Institution B believing that an IRA account had been opened to receive the deposit.

Taxpayer A did not realize an error had been made until he received a 1099-Int form for the 20 tax year indicating that the check had been deposited into a non-IRA instead of an IRA.

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 A contained in section 408(d)(3) of the Code in this instance.

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.

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 his assertion that his failure to accomplish a timely rollover was caused by an error of Financial Institution B.

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

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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.

If you wish to inquire about this ruling, please contact (ID
) at () . Please address all correspondence to SE:T:EP:RA:T.

Sincerely yours,


Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose