



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

AUG 24 2010

201046020

SE: T: EP: RA: T1

Legend:

Taxpayer A =

Broker A =

IRA A =

IRA B =

Company A =

Company B =

Company C =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Date 1 =

Date 2 =

Date 3 =

Dear

This is in response to a ruling request submitted by your authorized representative dated September 11, 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").

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

Taxpayer A, age 62, represents that she received a distribution from her individual retirement account (IRA A) totaling Amount 1 from Company A. Taxpayer A asserts that the failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Broker A. Taxpayer A further represents that Amount 2 has not been used for any other purpose.

Based on advice from Broker A, Taxpayer A instructed Broker A to execute a trustee-to-trustee transfer of Amount 1 from IRA A to IRAs with Company B. While executing the transfer, Broker A's office mistakenly checked a block on the form submitted to Company A that caused the withholding of 10% for federal taxes and 10% for state taxes. On Date 1, Amount 1 was withdrawn from IRA A and Amount 2 was withheld for taxes (Amount 3 withheld for federal taxes plus Amount 3 withheld also for state taxes). On Date 2, Amount 4, (Amount 1 minus Amount 2) was deposited into IRAs with Company B.

Taxpayer A and Broker A became aware of Amount 2 being mistakenly withheld for tax purposes subsequent to receiving an original and a corrected Form 1099R from Company A in 20 . Taxpayer A deposited Amount 2 into IRA B on Date 3.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount 2 which was mistakenly withheld for taxes.

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 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

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(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 60<sup>th</sup> 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)(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 the documentation submitted by Taxpayer A is consistent with her assertion that the failure to accomplish a timely rollover of Amount 2 was due to a mistake made by Broker A.

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 2 from IRA A. 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 2 will be considered a valid rollover contribution to IRA B 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 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  
SE:T:EP:RA:T1,

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

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

cc: