



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

OCT 20 2010

201102069

Uniform Issue List 408.03-00

SE: T: EP: RA: TY

XXXXX
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Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Account Y = xxxxx

Account Z = xxxxx

Financial Institution D = xxxxx

Financial Institution E = xxxxx

Amount N = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = xxxxx

Date 4 = xxxxx

Dear xxxxx:

This is in response to a letter ruling request dated April 6, 2010, as amended by correspondence dated October 15, 2010, submitted on your behalf by your authorized representative, for 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 made subject to penalties of perjury:

Taxpayer A, age 57, represents that on Date 1 she received a distribution of Amount N from IRA X with the intent to roll over Amount N into another IRA to be maintained at Financial Institution E. Taxpayer A asserts that, due to error by Financial Institution E, Amount N was not rolled over timely into another IRA. Taxpayer A asserts that Amount N has not been used for any purpose and remains deposited with Financial Institution E.

Taxpayer A held IRA X in the form of a 12-month Certificate of Deposit (CD) maintained at Financial Institution D. Upon the maturity of IRA X, Financial Institution D on Date 1 distributed to Taxpayer A a check for Amount N which she represents she, accompanied by her spouse, took three days later, on Date 2, to Financial Institution E where she informed its employee who assisted her that the check was an IRA rollover and that she wanted to fund an IRA CD with the check. Taxpayer A represents that the employee acknowledged that she understood the check represented IRA funds and provided Taxpayer A with forms to sign, which Taxpayer A represents she assumed was to deposit Amount N into a 60-month IRA CD. It is represented that on Date 2 Financial Institution E, instead of following Taxpayer A's instructions, deposited Amount N into Account Y, a 60-month non-IRA CD.

On Date 3, more than a year after Date 2, Taxpayer A became aware of the error and immediately notified Financial Institution E.

On Date 4, approximately one month after Taxpayer A discovered that Amount N had not been rolled over into an IRA, Account Y was liquidated and the proceeds of Account Y were deposited into Account Z, an IRA CD maintained at Financial Institution E. The proceeds of Account Y which were deposited, as described, into Account Z exceed, by thousands of dollars, Amount N, the amount distributed from IRA X on Date 1.

A letter which Financial Institution E addressed to Taxpayer A was submitted as part of this ruling request and documents Financial Institution E's failure to follow Taxpayer A's instructions to roll over Amount N into an IRA.

Documentation shows that prior to Date 2, Taxpayer A had invested the funds contained in IRA X in a sequence of IRA CDs maintained at two other financial institutions.

Based on the above facts and representations, you request the following rulings, as amended:

That the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount N from IRA X and

That the Internal Revenue Service determine that the deposit into Account Z of an amount equal to Amount N was a valid timely IRA rollover of the IRA X distribution from Financial Institution 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) 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)(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) 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, 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 her assertion that her failure to accomplish a timely rollover of Amount N of IRA X was caused by error committed by Financial Institution E.

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 N from IRA X.

Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met, the contribution of an amount not exceeding Amount N to Account Z is considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the treatment as a valid rollover contribution of any amount in excess of Amount N. Amounts in excess of Amount N that were deposited in Account Z may constitute excess IRA contributions under section 4973(b) of the Code.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling 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.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:
xxxxxx

xxxxxx