



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201114045

JAN 12 2011

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

T:EP:RA:T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
IRA X = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
  
Bank B = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Bank C = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Amount D = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Individual F = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Individual H = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Amount E = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxxxxxx, 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 penalties of perjury in support of your request.

You assert that your failure to accomplish a rollover of Amount D into an IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to

an error committed by Individual F of Bank B. You further assert that you relied on the statement of Individual F of Bank B who mistakenly advised you that you could rollover the retirement funds within a period of 90 days.

You state that you maintained IRA X with Bank B. On xxxxxxxxxx, you withdrew Amount D from IRA X intending to select a new, higher yielding retirement investment. You further state that at the time of withdrawal, Individual F advised you that the rollover period was 90 days. With a view to evaluating alternative retirement investments, on xxxxxxxxxx, you temporarily deposited Amount D into your checking account with Bank C.

On xxxxxxxxxxxxxxxx, you, by coincidence, had a conversation with Individual H concerning your third quarter estimated tax returns and further concerning the investment of Amount D, your retirement funds. You assert that it was Individual H who advised you that the rollover period was only 60 days and not 90 days as Individual F had told you in error.

Upon learning that the rollover period was only 60 days, on xxxxxxxxxxxxxxxx, you deposited Amount E back into your IRA X with Bank B. You assert that the delay in making a valid rollover arose by reason of the erroneous advice of Individual F of Bank B.

You further assert that you relied upon Individual F's statement that Amount D could be rolled over into a rollover account within 90 days. You state that Amount D remained with Bank C until it was deposited into IRA X with Bank B on xxxxxxxxxx; the day following the day you learned that the rollover period was just 60 days.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount E from IRA X.

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 distribute, 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-

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- (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 received 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 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 in 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 included 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 you is consistent with your assertion that your failure to accomplish a rollover of Amount E was caused by your reliance on Individual F's false statement about the time period required for a valid rollover.

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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 E from IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the Service will treat the contribution of Amount E to an IRA account with Bank B as a rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
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