



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201226034

APR 04 2012

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

IRA X:

IRA Y:

Bank A:

Account P:

Account A:

Website B:

Amount M:

Amount N:

Amount Q:

Date 1:

Date 2:

Date 3:

Month 5:

201226034

Dear :

This is in response to letters dated June 22, 2011, and December 13, 2011, in which you request 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 submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, under age 59 ½, maintained Individual Retirement Accounts (IRAs), IRA X and IRA Y. Taxpayer A asserts that on Date 1, he requested a distribution of Amount M and Amount N, from IRA X and Y, respectively, and that his failure to accomplish a rollover of Amounts M and N within the 60-day period prescribed by section 408(d)(3) of the Code was due to misdirection within Website B causing an unintended deposit to a non-IRA account.

On Date 1, Taxpayer A requested distributions from IRA X and Y in order to combine them with additional funds and rollover and deposit into a new IRA invested in a certificate of deposit (CD). Taxpayer A received a distribution of Amount M and N from IRAs X and Y and deposited these amounts into Account P on Date 2.

Taxpayer A has routinely followed his IRA CDs and has made rollovers from his IRAs into new IRAs with CDs of his own selection by following the prompts on Website B.

On Date 3, Taxpayer A visited the Website B page and, as before, under the heading "Retirement – Individual Retirement Account and Roth IRA Account" followed prompts to click on an "IRA" tab to find CD rates for his intended IRA rollover of Amount M and N. A certificate of deposit with Bank A was displayed.

Taxpayer A asserts that he completed the application process for the certificate of deposit with Bank A. Taxpayer A electronically transferred Amounts M and N from Account P to Account A five days after receiving his distributions from IRAs X and Y. Believing that Account A was an IRA CD, Taxpayer A also deposited Amount Q as his annual IRA contribution. Taxpayer A received the confirmation letter from Bank A showing the creation of Account A and a balance of Amounts M, N, and Q combined.

Taxpayer A represents that, exactly as had been the case in his prior rollovers, at no location in the confirmation letter or certificate from Bank A was the term "IRA" mentioned or referenced and that this format was identical to previous IRA certificate of deposit confirmations he had received. Taxpayer A represents that

this confirmation letter led him to believe that the transaction was as he intended, a rollover to a new IRA CD.

Taxpayer A has submitted documentation supporting his assertion that the links on Website B under a heading displayed as "Retirement – Individual Retirement Account and Roth IRA Account" leads to Bank A's new IRA CD offerings.

Taxpayer A discovered in Month 5 when he logged onto the Bank A website that Account A was not an IRA account as he intended. Taxpayer A immediately contacted Bank A and a Certified Public Accountant about resolving this problem by closing Account A and moving the funds to an IRA CD, but this was not possible because the 60-day rollover period had expired.

Taxpayer A represents that Amounts M and N in Account A are held for the purpose of completing a rollover pending the outcome from this ruling request.

Based on the facts and representations, you request a ruling 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 Amounts M and N and with respect to Amount Q.

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)(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

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 rollover of Amounts M and N within the 60-day period prescribed by section 408(d)(3) of the Code was due to misdirection within Website B causing an unintended deposit to 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 Amounts M and N from IRA X and Y. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to make a rollover contribution of Amount M and N to a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

With respect to Amount Q, in order to be eligible to be rolled over an amount must first be distributed from an IRA or other retirement plan. Since Amount Q was contributed to a non-IRA account it cannot now be rolled over into a rollover IRA.

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 have any questions, please contact XXXXXXXXXXXXXXXX (XXXXXXX) by phone at XXXXXXXXXXXX or fax at XXXXXXXX.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky".

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose