



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

201246044

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 21 2012

U.I.L. 408.03-00

T:EP:RA:T3

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXXX

IRA Z = XXXXXXXXXXXXXXXXXXXXX

IRA ZZ = XXXXXXXXXXXXXXXXXXXXX

Amount A = XXXXXXXXXXXXXXXXXXXXX

Amount B = XXXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXXX

Company P = XXXXXXXXXXXXXXXXXXXXX

Company R = XXXXXXXXXXXXXXXXXXXXX

Company N = XXXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXXX

201246044

Date 2 = xxxxxxxxxxxxxxxxx
Date 3 = sssssssssssssssss
Date 4 = sssssssssssssssss
Year 1 = xxxxxxxxxxxxxxxxx

Dear xxxxxxxxxxxxx

This is in response to your letter dated xxxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxxx, xxxxxxxxxxxxx, and xxxxxxxxxxxxx, 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 penalty of perjury in support of your request.

Taxpayer A represents that on Date 2, he received a distribution from IRA Y totaling Amount B and on Date 3, received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover of Amount D (Amounts A and B) within the 60-day rollover period prescribed by section 408(d)(3) was due to the failure of Company N to properly title IRA Z.

Taxpayer A is a beneficiary of IRA Z, maintained by Company N. Taxpayer A represents that IRA Z was established on Date 1. Taxpayer A further represents that Company P was the custodian of IRA Z.

On Date 2 and Date 3, Taxpayer A requested a transfer of funds from IRA X and IRA Y totaling Amount D into IRA Z. At that time IRA Z was not titled as an inherited IRA. Consequently, the funds from IRA X and IRA Y were rolled over into IRA Z because Company N did not recognize the nature of the account due to the incorrect title. Thus, the transfer of funds from IRA X and IRA Y to IRA Z resulted in a failed rollover because an inherited IRA is not treated as an IRA for rollover purposes.

On Date 4, Company N closed its office from which Taxpayer A was serviced and Company R took over the custodianship of IRA Z. In Year 1, Company R became aware and advised Taxpayer A that Amount D should not have been transferred into IRA Z. At that time the funds from IRA X and IRA Y along with the remaining funds in IRA Z were deposited into IRA ZZ by Company R.

Documentation from Company N acknowledges that Company N inadvertently combined the funds from IRA X and IRA Y with IRA Z because it did not title the account correctly.

Based upon the foregoing facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount 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) 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 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 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 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)(E) of the Code provides that the rollover provisions of section 408(d)(3) 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 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 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 Amount D was due to the failure by Company N to properly title IRA Z.

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 D. Taxpayer A is permitted to withdraw Amount D from IRA ZZ in order to rollover Amount D into a new rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D 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 transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

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
xxxxxxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,



Aida Perry
Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

Cc: xxxxxxxxxxxxxxxxxxxx