



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201306029

Uniform Issue List: 408.03-00

NOV 13 2012

T:EP:RA:T3

Legend:

Taxpayer A =

Individual B =

IRA X =

Account Y =

Amount A =

Amount B =

Amount C = \$

Amount D = \$

Amount E = \$

Company A =

Company B =

Individual C =

Dear :

This is in response to your request dated March 9, 2012, as supplemented by correspondence dated May 4, 2012, submitted 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 the ruling requested

Taxpayer A represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made by Individual C of Company B during the 60-day period.

Individual B maintained IRA X with Company A. Individual B passed away on April 27, 20 , while traveling overseas. Taxpayer A is Individual B's surviving spouse and the beneficiary of IRA X. In early May 20 , Taxpayer A met with his tax advisor, Individual C, an employee of Company B, and informed him that he wished to use Amount B for funeral expenses. Individual C mistakenly informed Taxpayer A that he could not take a partial withdrawal but that he had to take a lump sum distribution of the entire value of IRA X and then re-invest the amount he did not need into a new IRA contract. Accordingly, on June 4, 20 , Taxpayer A received a distribution of Amount A and used Amount B for funeral expenses. On June 18, 20 , Taxpayer A took a personal check of Amount C to Individual C to rollover into an IRA contract. Individual C prepared paperwork, which Taxpayer A signed. However, Individual C mistakenly prepared paperwork to open Account Y, a non qualified annuity. Documentation from Company B acknowledges that an error was made by Individual C.

Taxpayer A did not become aware of the mistake until early 20 , when he received a Form 1099-R, for the 20 tax year which showed a distribution of Amount A. At that time, Taxpayer A contacted Individual C, who assured Taxpayer A that he would rectify the error. Taxpayer A assumed that the matter was taken care of when he filed his 20 federal tax return. However, in March of 20 , Taxpayer A became aware that the error had not been corrected when he was contacted by the IRS regarding additional tax owed on the distribution from IRA X. Taxpayer A has not used the funds in Account Y other than making a withdrawal of Amount D.

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 Amount E (Amount C less 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 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)(E) of the Code provides that the rollover provisions of section 408(d) 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 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 documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to an error made by Individual C, an employee of Company B.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E into a Rollover IRA. 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 E 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 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.

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

If you wish to inquire about this ruling, please contact (ID -) at () -
Please address all correspondence to SE:T:EP:RA:T 3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: