Uniform Issue List: 408.03-00

200403098

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 22 2003

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Legend:

Bank A = ******************
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Roth IRA = **********************************

Amount A = $********

Bank B = **************
****

Bank D = *********************************

Dear ***************

This is in response to your request dated June 18, 2003, as supplemented by correspondence dated September 19, 2003, 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 penalties of perjury in support the rulings requested.

You maintained a Roth Individual Retirement Account (Roth IRA) with Bank A. In May 2002, you instructed Bank A by telephone to make a direct rollover of your Roth IRA to another Roth IRA with Bank B. Bank B invested the funds it received from Bank A in a regular CD instead of depositing them in another IRA.

You first realized the mistake by Bank B approximately three or four months after the attempted rollover. During your conversation with representatives of Bank B, you learned Bank B does not have a Roth IRA program. The supervisor told you that an inexperienced representative made the mistake and should have pointed out the problem to you. Bank B could not return your money without a penalty until May 29, 2003, the maturity date of the CD.

In August 2003, you established a Roth IRA at Bank D and contributed Amount A to your new Roth IRA.

Bank B paid taxable interest earned on the CD in your account, and you contributed all of the interest paid by Bank B to your Roth IRA at Bank D.

Based on the above facts, you request a ruling that the Service waive the 60-day rollover requirement with respect to the distribution of Amount A from Bank A, because the failure to waive such requirement would be against equity or good conscience under section 408(d)(3)(I) of the Code.

Section 408A of the Code provides that, except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

Section 408A(e) of the Code (concerning a rollover contribution) provides that for purposes of this section, the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

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 (concerning taxability of distributions from a traditional IRA) 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 60^{th} 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 60^{th} 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) of the Code where 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)(l) 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; 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 1-year rollover limitation under section 408(d)(3)(B) of the Code is not applicable in this situation.

Information presented demonstrates substantial hardship by reason of an error committed by a financial institution, and indicates that you could not have reasonably satisfied the requirement that Amount A be deposited into a Roth IRA within 60 days of the distribution from Bank A. Bank B failed to follow your instructions to deposit the money in a Roth IRA and did not notify you that it did not have a Roth IRA program. Under these circumstances, the failure to deposit Amount A into a Roth IRA within the 60-day period was beyond your reasonable control, and the failure to waive the 60-day requirement would be against equity or good conscience.

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 A from Bank A. Your new Roth IRA at Bank D is considered a valid rollover of the distribution of Amount A from Bank A, provided all other requirements of section 408(d)(3) of the Code are satisfied (except the 60-day requirement with respect to such contribution). If these requirements are met, Amount A will be considered a valid rollover contribution within the meaning of section 408A(e) of the Code.

The interest earned on the CD at Bank B is taxable for the year(s) earned. Since you contributed the interest earned to your Roth IRA at Bank D, such amount may be treated as an after-tax contribution for the current year, subject to the limits on annual contributions to a Roth IRA.

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 Individual 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 please contact at

Sincerely yours,

Alan C. Pipkin, Jr., Manager
Employee Plans Technical Group 4

Enclosures:
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Notice of Intention to Disclose, Notice 437