Uniform Issue List: 408.03-00

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

200404053

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 28 2003

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Legend:

Individual A	=	**************
Individual B	=	************
Bank F	=	******************* *****************************
Amount A	=	$*********************** ********************* ******************* *****************************
Amount B	=	$************************ ********************* ******************* *****************************
Amount B 1	=	$**
Bank C	=	************************** ******************

Dear Mr. and Mrs. *****:

This is in response to your request received March 31, 2003, as supplemented by correspondence dated May 22, 2003, in which you request waivers 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.

Individual A and Individual B maintained an Individual Retirement Accounts (IRAs) with all funds from their IRAs with Bank F. In July 2002, Individual A and Individual B withdrew from Bank F. The moneys were deposited on July 22, 2002, in Bank C with the instructions that the funds were to remain in their IRAs. Individual A and Individual B were told that the moneys were in IRAs. Individual B received a distribution check for Amount B 1, which was less than Amount B reported by Bank F on Form 1099-R. Earlier in 2002, Individual B took distributions from his IRA for current expenses and to help pay relocating costs.

When Individual A and Individual B had their federal tax return prepared for 2002, they realized Bank C's mistake and their money was not in IRAs because Bank C reported taxable interest earned on the accounts.

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

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 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)(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; 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 does not apply to these situations.

Information presented indicates that the Individual A and Individual B did not reasonably satisfy the requirement that Amount A and Amount B be deposited into their respective IRAs within 60 days of the distribution from Bank F for reasons beyond their control. Bank C failed to follow their instructions to keep their money in IRAs. Under these circumstances, the failure to deposit Amount A and Amount B into their respective IRAs within the 60-day period was beyond the reasonable control of Individual A and Individual B, 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 and Amount B. Individual A and Individual B are granted a period of 60 days from the issuance of this ruling letter to contribute up to Amount A and up to Amount B 1 to their respective IRAs to be established by Individual A and Individual B, 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, the amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

The difference between Amount B and B 1 should be reported as taxable distributions on their 2002 federal income tax return because such amount was not deposited in Bank C, but was used for other purposes.

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:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437