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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

NOV 23 2004

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SE:T:EP:RA:T2

Legend:

Taxpayer A = ********************

IRA X = ********************

Company C = ********************

Amount D = ********************

Amount E = ********************

Account H = ********************

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

Dear ********************:

This is in response to your letter dated September 15, 2004, as supplemented by correspondence dated October 21, 2004, and October 27, 2004, 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 penalties of perjury in support of your request.

Taxpayer A who is 67 years old maintained an individual retirement arrangement, IRA X, with Company C. On July 23, 2002, Taxpayer A withdrew Amount D from IRA X, an amount he asserts that he intended to roll over to an IRA at Bank B. Documentation submitted by Taxpayer A indicates that on August 7, 2002, Amount D (including other funds) was used to purchase a certificate of deposit, Account H, at Bank B. Taxpayer A asserts that he thought Amount D had been rolled over to an IRA by Bank B and did not learn that Amount D had not been rolled over to an IRA until he received notification from the Internal Revenue Service in June 2004 indicating that he had failed to include Amount D in his gross income for the 2002 tax year. Taxpayer A further states that he relied on Bank B to invest Amount D in a manner that would not cause tax consequences and assumed that Bank B understood his intent to roll over Amount D to an IRA. Taxpayer A further states that he did not report the distribution in his gross income for tax year 2002 because he assumed that Amount D had been rolled over. Taxpayer A asserts that Amount D continues to be invested in Account H and that he has not withdrawn or otherwise used Amount D since it has been invested in Account H.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

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)(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 the time during the 1-year period ending in 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)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 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 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 submitted in this case indicates that Taxpayer A received a distribution from IRA X on July 23, 2002. Documentation submitted with this request indicates that on August 7, 2002, Taxpayer A purchased a certificate of deposit with Amount D at Bank B. Taxpayer A asserts that he relied on Bank B to invest Amount D in a tax-deferred account and assumed that Bank B understood his intent to make a tax-free rollover of Amount D to an IRA. Taxpayer A further asserts that he assumed that Bank B had rolled Amount D over to an IRA and was unaware that Amount D was not invested in an IRA until he received notification from the Service in June 2004 indicating that he had failed to include Amount D in his gross income for tax year 2002. Taxpayer A asserts that he has not withdrawn or otherwise used Amount D since it has been invested in Account H. Taxpayer A filed his request for a waiver of the 60-day rollover period shortly after discovering that Amount D had not been rolled over to an IRA within 60 days.

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 from IRA X. Taxpayer is granted a period of 60 days from the date of this ruling to contribute Amount D to an 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 D will be considered rollover contribution within the meaning of section 408(d)(3) of the Code.

Documentation submitted with this request for a waiver of the 60-day rollover period indicates that Taxpayer A combined other funds with Amount D when he purchased the certificate of deposit at Bank B on August 7, 2002. This ruling only extends to the Amount D, the amount distributed from IRA X on July 23, 2002.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This ruling assumes that IRA X satisfies the qualification requirements of Code section 408 at all times relevant to this transaction.

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 taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact
*********************************SE:T:EP:RA:T2.

Sincerely yours,
(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of letter ruling
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