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

200544027

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 12 2005

U.I.L.: 408.03-00

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Legend:

Taxpayer A	=	********************
Amount B	=	********************
IRA X	=	********************
Company C	=	********************
Corporation D	=	********************
Company L	=	********************
State R	=	********************

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

This is in response to a request dated August 12, 2004, as supplemented by correspondence dated November 8, 2004 and May 4, 2005, 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 ("Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Company C. In 2003, Taxpayer A decided to invest a portion of the IRA X funds in real estate. Taxpayer A states that he explained to a representative of Company C that he wanted to invest some of his IRA funds in real estate and requested that Company C transfer Amount B from IRA X to Corporation D. On or about March 18, 2003, Company C wire transferred Amount B from IRA X to Corporation D. Corporation D served as the escrow company for the purchase of the real estate. Documentation submitted by Taxpayer A shows that a special warranty deed was executed by Taxpayer A and Company L, a limited liability company, on March 18, 2003, conveying to Taxpayer A, as the trustee of his IRA, an undivided fifty percent interest in certain real property located in State R. Taxpayer A asserts that pursuant to his instructions, Corporation D titled his interest in the property as "Taxpayer A, as Trustee for the Taxpayer A IRA", as to an undivided fifty percent interest. The remaining fifty percent interest in the property is owned by an unrelated party. Taxpayer A represents that the funds that were wire transferred from IRA X to Corporation D represented his portion of the purchase price of the property, that he did not contribute any personal funds towards the purchase of the property, and that there is not any indebtedness on the property.

Taxpayer A states that he believed that by titling the property in the above described manner the property would continue to be held under the terms of the IRA he maintains with Company C. Taxpayer A also states that he was not aware that he could not serve as the trustee or custodian of an IRA; that he did not intend to take a distribution from IRA X; that he never had possession of the funds or use the funds for any personal purpose.

In June 2004, Taxpayer A states that he attempted to purchase another parcel of real estate with funds from IRA X which he thought would also be held in the IRA he maintains with Company C. Taxpayer A states that he met with a Company C representative who provided him with a Company C distribution form and who informed him that Company C could not hold title to the real estate. Further, Taxpayer A states that the Company C representative told him that he, Taxpayer A, could not serve as the trustee or custodian of the IRA and that the use of funds in IRA X to purchase real estate would be treated as a distribution reportable by Company C on Form 1099-R.

Taxpayer A represents that he informed the Company C representative that he completed a similar investment purchase in 2003; that a distribution form was not provided to him by Company C; nor did Company C report the distribution on a Form 1099-R. It was subsequently discovered that Company C did issue a Form 1099-R addressed to "Taxpayer A, Company C, Custodian, IRA Rollover" that showed that a distribution in the amount of Amount B was made from IRA X in calendar year 2003. Taxpayer A states that he did not receive the Form 1099-R even though it contained his address as well as his tax identification number.

It has been represented that Taxpayer A mistakenly believed that he could hold title to the property as trustee for the IRA he maintains with Company C. Therefore, Taxpayer A states that he did not expect to see the property listed as an investment on his IRA X account statements that were issued by Company C subsequent to the purchase of the real estate since he believed that he was holding title to the property as trustee on behalf of IRA X. Company C, however, described the withdrawal as a normal distribution as indicated on the account statement submitted for the period ending December 31, 2003. Taxpayer A would like to contribute the real estate to another IRA.

Based on the above facts and representations, Taxpayer A requests that the Service, under its authority to waive the 60-day rollover requirement, waive such requirement with respect to the distribution of Amount B from IRA X so that Taxpayer A can contribute the real estate purchased with Amount B to another 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 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)(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 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 compete 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.

Documentation submitted in this case shows that a distribution in the amount of Amount B was made from IRA X in 2003. Taxpayer A has represented that Amount B was used to purchase real estate that he assumed could be held as an investment in the IRA he maintains with Company C, who is the custodian of IRA X. Company C, however, treated the withdrawal as a "normal distribution" as shown on the account statement issued by Company C for the period ending December 31, 2003 and the Form 1099-R prepared by Company C.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the owner failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Revenue Procedure 2003-16, for example, errors committed by a financial institution, disability, postal error, and hospitalization. Based on the facts submitted in this case, a rollover of Amount B to another IRA was not contemplated by Taxpayer A when he initiated the distribution of Amount B from IRA X. Rather, Taxpayer A mistakenly thought that he was making an investment of Amount B and that such investment, the real estate, would continue to be held in the IRA he maintained with Company C with him as the IRA trustee. Amount B has been out of IRA X for over two years.

Further, section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n) of the Code) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of Code section 408.

One of the requirements is that an applicant must assure the uninterrupted performance of its fiduciary duties notwithstanding the death or change of its owners (the ongoing business concept). This precludes an individual from being a trustee or custodian and, more importantly, prevents an individual from being the trustee or custodian or his or her own account. An individual's ability to serve as a trustee or custodian ceases upon his or her death. Thus, for example, any IRA the individual handles as nonbank trustee or custodian would not have a trustee or custodian upon the individual's death. The first day of the year in which the individual dies, the IRA ceases to be an IRA and is deemed distributed and includable in gross income for that year. However, there will be no trustee or custodian to administer the distribution. Further, in a situation where an individual serves as the trustee of an IRA, the IRA ceases to meet the requirements of Code section 408 as of the beginning of the year in which the individual became the trustee thereof.

Under the circumstances presented in this case, the failure to waive the 60-day rollover requirement would not be against equity or good conscience. Therefore, with respect to your ruling request, we conclude that, pursuant to Code section 408(d)(3)(I), the Service declines to waive the 60-day rollover requirement with respect to the distributions of Amount B from IRA X, and thus Amount B will not be considered a valid rollover contribution under Code section 408(d)(3) because of the 60-day rollover requirement was not satisfied.

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 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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions please contact ********************SE:T:EP:RA:T:2.

Sincerely yours,

[redacted]

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

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