



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200602051

OCT 18 2005

U.I.L. 408.03-00

SE: T. EP: RA: T2

Legend:

- Taxpayer A = *****
- IRA X = *****
- Bank B = *****
- Amount D = *****
- Fund F = *****
- Company C = *****
- Amount E = *****
- Bank K = *****

Dear *****:

This is in response to your letter dated January 20, 2005, as supplemented by correspondence dated March 30, 2005, and April 1, 2005, 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, a 72 year old individual, maintains an individual retirement arrangement, IRA X, with Bank B. In September [REDACTED] Taxpayer A decided to invest some of the IRA X funds in Fund F offered by Company C. Fund F is an investment offered by Company C under its IRA program. Documentation submitted with this request shows Taxpayer A withdrew Amount D from IRA X on September 1, [REDACTED] Company C decided to close Fund F to new investors on September 10, [REDACTED] Taxpayer A states that he spoke with Company C personnel who suggested that he could meet the investment deadline by transferring funds from IRA X to Fund F instead of completing the transaction by mail. Based upon this suggestion, Taxpayer A transferred Amount E from IRA X to Fund F.

After investing Amount E in Fund F, Taxpayer A retained possession of Amount D. Taxpayer A asserts that around this time, he had scheduled to attend two investment seminars not related to this transaction and decided not to return Amount D to an IRA until after he had attended those seminars. After deciding that the material presented at the seminars was too risky, and after pursuing other possibilities, Taxpayer A asserts that he decided to return Amount D to Bank B but Bank B would not accept Amount D because the 60-day rollover period had expired. Taxpayer A states that he did not make a note of the 60-day rollover period and forgot that he had the check in his possession. When he realized that he had kept Amount D out of an IRA for too long, Taxpayer A, on November 15, [REDACTED] deposited Amount D into his checking account he maintains with Bank K where it remains deposited.

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)(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 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 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 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 sections 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 withdrew Amount D from IRA X on September 1, [REDACTED]. Taxpayer A states that he decided to explore other investment opportunities before depositing Amount D back into an IRA. Taxpayer A says that he did not make a note as to when the 60-day rollover period expired and did not remember that he had the check in his possession until after the expiration of the 60-day rollover period at which time he attempted to put it back into IRA X.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to

another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example, errors committed by a financial institution, hospitalization, postal error, and disability. Information presented by Taxpayer A demonstrates that the ability to deposit Amount D into an IRA within the 60-day rollover period was within the reasonable control of Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X and thus Amount D will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code because the 60-day rollover requirement was not satisfied.

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.

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
Notice 437