Uniform Issue List: 408.03-00

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

200405014

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 4 2003

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T:EP:RA:T4

Legend:

Amount B = $*********

Bank N = ***************
****

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

Credit Union O = *****************************
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Dear M**********:

This is in response to your request dated March 26, 2003, as supplemented by correspondence dated May 30, 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 to support the ruling requested.

You maintained a self-directed individual retirement account, IRA X, with Bank N that you invested in a certificate of deposit (CD). You underwent ************* surgery followed by radiation and chemotherapy. You were recovering from the mentally debilitating effects of this treatment when you received a notice from Bank N that IRA X's CD had matured. In a state of confusion, you directed Bank N to pay you the proceeds of the CD. Bank N mailed you a check for Amount B on May 2, 2002 that you deposited in a savings account in Credit Union O on May 15, 2002. Bank N did not tell you that this distribution from IRA X was taxable nor did it provide you with information about the option to make a tax-free rollover to another IRA.

When you prepared your tax returns, your accountant informed you that since you failed to rollover the distribution from Bank N into another IRA you are subject to tax on Amount B.

Based on the above facts, you request that the Service waive the 60-day rollover requirement with respect to the distribution of IRA X of the Amount B, because the failure to waive such requirement would be against equity or good conscience.

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) 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 a situation where the trustee or custodian of an IRA makes a direct transfer of the amount in the IRA to the trustee or custodian of another IRA.

Information you presented shows that you were confused by the trauma of hospitalization, surgery and chemotherapy when you directed Bank N to pay you the proceeds of IRA X's CD and deposited them in a taxable savings account. Under these unusual circumstances you could not reasonably satisfy the requirement that Amount B be deposited in an IRA within 60 days of the distribution from IRA X. The failure to deposit Amount B into another 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 that part of the distribution of IRA X of the Amount B. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount B, in cash, into another IRA provided all other requirements of section 408(d)(3) of the Code are satisfied, except the 60-day requirement with respect to such contribution, then, this amount will be considered a rollover contribution with the meaning of section 408(d)(3) of the Code.

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.

If you have any questions please contact

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