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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

JUL -8 2004

*T:EP:RA:UK*

Uniform Issue List: 408.03-00

Legend:

Individual A =

Company B =

Company C =

IRA X =

Amount D =

Date M =

Dear :

This is in response to your request dated March 14, 2003, as supplemented by correspondence dated March 18, 2004, for a waiver of the 60-day rollover requirement in section 408(d)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling request:

Individual A maintained IRA X at Company B. Individual A attempted a trustee-to-trustee transfer of his balance in IRA X, Amount D, from Company B to Company C. Company B contacted Company C and sent a form for a direct transfer and a check was made payable to "Retirement Services" at Company C. Company C sent a confirmation to Company B that Amount D had been received into a custodial account. Individual A noted that his statement from Company B reflected the transfer and a statement from Company C reflected a deposit of Amount D into a money market account. Individual A intended to make a transfer of IRA X to an IRA with Company C. Company C later informed Individual A of the need to first establish an IRA with Company C before a trustee-to-trustee transfer could be made. At the end of the tax year Individual A discovered that Amount D was not transferred into an IRA and that more than 60 days had elapsed after Date M. Individual A made no rollovers from an IRA within the one year period prior to or after Date M.

Based on the above facts and circumstances, you request that the Service waive the 60-day rollover requirement with respect to Amount D, 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) 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<sup>th</sup> 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<sup>th</sup> 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) of the Code, 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, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates that Individual A instructed his IRA fiduciary, Company B, to make a direct transfer of Amount D to an IRA with Company C. However, Company C deposited Amount D into a money market account and claimed later that Individual A had neglected to establish an IRA with Company C. Individual A relied on Company C to establish his new IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount D in cash to an IRA, provided all other requirements of section 408(d)(3) of the Code are otherwise satisfied (except the 60-day rollover requirement) Amount D will be considered a rollover within 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 as precedent.

If you have any questions please contact.....

Sincerely yours,

  
Donzel H. Littlejohn, Manager  
Employee Plans Technical Group 4