



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200610028

DEC 14 2005

Uniform Issue List: 408.03-00

SE: T. EP: RA: T3

Legend:

Dear :

This is in response to your request dated , as supplemented by correspondence dated , 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 penalty of perjury in support of the ruling requested

Taxpayer A maintained IRA W and IRA X with Company B. Taxpayer B maintained IRA Y and IRA Z with Company B. During calendar year 2002, Taxpayer A received distributions from her IRAs W, and X, totaling Amount A. During calendar year 2002, Taxpayer B received distributions from his IRAs Y and Z totaling Amount B. Taxpayers A and B assert that their failure(s) to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) was due to miscommunication with an employee of Company A which led to Amounts A and B being placed into non-IRA accounts. Taxpayers A and B further represent that Amounts A and B have not been used for any other purpose.

Taxpayers A and B were concerned with the investment of their IRA accounts and decided to transfer their retirement funds into a safer investment. They discussed this with a representative of Company A. They transferred amounts A and B to Company A and these amounts were mistakenly placed in non-IRA accounts.

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Documentation submitted with your ruling request includes a statement signed by Individual C, a representative of Company A, in which Individual C, in summary, indicates that his error resulted in the distributions received by Taxpayers A and B not being placed into other IRAs. He also indicates that Taxpayers A and B relied on him to handle the investment of their IRA funds so that there would be no tax consequences to them.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amount A and Amount B in this instance.

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 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 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 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 the failure to waive such requirement would be against equity or good conscience, including

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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 (January 27, 2003) 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, 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 information presented and documentation submitted by Taxpayers A & B, including the statement submitted by Individual C, is consistent with their assertion that their failure(s) to accomplish timely rollovers were caused by their reliance upon a representative of Company A that he would deposit their IRA funds into other IRAs which would result in no tax consequences to them and his failure to do so.


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 A from IRAs W and X and Amount B from IRAs Y and Z. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts A and B into Rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, said contributions of Amounts A and B into other IRAs will be considered rollover contributions 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 letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
. Please address all correspondence to SE:T:EP:RA:T3 .

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group

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Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose