



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 24 2005

200524034

Uniform Issue List: 408.03-00

SE: T: EP: RA: TI

Legend:

Taxpayer A

IRA X

IRA Y

Custodian M

Amount 1

Amount 2

Amount 3

CD 1

CD 2

CD 3

Dear:

This letter is in response to a ruling request submitted by your authorized representative dated February 13, 2004 as supplemented by correspondence dated July 7, 2004, November 12, 2004, March 8, 2005, and March 10, 2005, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A is 78 years old and suffered a stroke several years ago. Taxpayer A maintained IRA X and IRA Y, individual retirement accounts ("IRAs") under section 408(a) of the Code. In early 2003, Taxpayer A's accountant advised him of the need to take a minimum distribution for 2003 of Amount 1. This distribution was made in June 2003. On July 24, 2003, in an attempt to consolidate his IRAs with one custodian, in order to make minimum required distributions easier, Taxpayer A withdrew Amount 2 from IRA X. On the same day, intending to establish rollover IRA accounts with the same custodian, Taxpayer A used those funds to purchase two certificates of deposit ("CD"), CD 1 and CD 2, with Custodian M. On September 24, 2003, Taxpayer A withdrew Amount 3 from IRA Y. On the same day, also intending to establish a rollover IRA with Custodian M, Taxpayer A used those funds to purchase CD 3 and deposited the balance into a non-IRA checking account with Custodian M.

Taxpayer A believed he had 3 IRAs and was unaware that these CDs and checking account were non-IRA accounts until the review of his [REDACTED] tax data. These amounts remain in these non-IRA CDs and checking account.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distributions of Amount 2 and Amount 3 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.

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 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) where the 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).

Revenue Procedure 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, 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 by Taxpayer A demonstrates that Taxpayer A intended to consolidate his IRAs with one custodian by withdrawing the assets of IRA X and IRA Y and rolling them over to IRA accounts with Custodian M. Because of a miscommunication between Taxpayer A and Custodian M Amounts 2 and 3 were mistakenly transferred to non-IRA accounts. The mistake was not discovered until after the expiration of the 60-day rollover period. At all times, the assets have remained intact in these non-IRA accounts.

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 Amounts 2 and 3. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to make the rollover. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will

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be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 have any questions, please contact [REDACTED] (Badge No. [REDACTED]) at [REDACTED]

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437