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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

200919061

FEB 12 2009

Uniform Issue List: 408.03-00

Control Number:

SE:T:EP:RA:T1

Legend:

Taxpayer =

IRA A =

Financial Institution B =

Account C =

Financial Institution D =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This letter is in response to a request for a letter ruling dated March 19, 2007, as supplemented by additional correspondence dated August 9, 2007, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 5 from your individual retirement annuity (IRA A) maintained with Financial Institution B.

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

Taxpayer represents that he received a distribution from IRA A totaling Amount 5. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by Financial Institution D. Taxpayer did not use any part of this distribution.

Taxpayer maintained IRA A, an individual retirement annuity under section 408(b) of the Code. Taxpayer represents that in May, 2006, Taxpayer desired to diversify IRA A which had a value of Amount 1. Taxpayer deposited Amount 2 in another IRA annuity, Amount 3 in an immediate IRA annuity, and took a distribution of Amount 4. On June 1, 2006, Taxpayer and his spouse signed an application to use Amount 5 to purchase a jointly held certificate of deposit (CD) with Financial Institution D. Taxpayer represents that he told the employee of Financial Institution D that Amount 5 was from an IRA and assumed the funds would be deposited into another IRA. When Taxpayer's certified public accountant prepared his Form 1040 tax return for 20 , he discovered Taxpayer had been issued a Form 1099-R for a distribution exceeding Amount 2 from IRA A. Representatives from Financial Institution D have refused to acknowledge responsibility for the deposit of Amount 5 into Account C, a non-IRA CD.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 5.

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 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^{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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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 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) 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 (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 prevented him from completing the rollover during the 60-day rollover period of section 408(d)(3)(A) of the Code. In this case, Taxpayer claims that an error by Financial Institution D caused Amount 5 to be deposited in a nonqualified CD rather than being deposited into a rollover IRA. However, qualified IRAs do not permit or provide for co-ownership by a spouse such as occurred in this case. Also, the application form completed by Taxpayer does not indicate that the CD is an IRA. Information provided by Taxpayer fails to establish that Financial Institution D was on notice that Amount 5 was a distribution from a qualified IRA. Further, Taxpayer is unable to provide either (1) a contemporaneous written document (such as an application form or letter) establishing that Taxpayer applied to Financial Institution D for establishment of a rollover IRA, or (2) a written statement from Financial Institution D that it erred in placing Taxpayer's assets in a nonqualified account. Therefore, Taxpayer's withdrawal of IRA funds (Amount 5) from IRA A and subsequent deposit in a nonqualified CD with Financial Institution D is a taxable event under section 408(d)(1) of the Code for the tax year, and the Service must decline to provide a waiver of the 60-day rollover requirement in this case.

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 ,
(I.D. #), at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
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Notice of Intention to Disclose, Notice 437