



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200409039

DEC 1 2003

Legend:

Amount A = \$*****
Custodian C = *****
Insurance Co. D = *****
Incorrect Zip Code = *****

Dear *****:

This is in response to your request dated April 8, 2003, as supplemented by correspondence dated June 2, 2003, in which you requested 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 to support the ruling requested.

You maintained a SIMPLE IRA described in section 408(p) of the Code with Custodian C. Custodian C decided to close all SIMPLE IRA accounts and sent all of the information to you on December 27, 2002, including a check for Amount A. However, the check and other information were sent to the Incorrect Zip Code, which caused a delay.

In January 2003, your financial advisor informed you that you were eligible to make a tax-free rollover of funds from your SIMPLE IRA distribution from Custodian C. During the last week in January 2003, you endorsed the distribution check from Custodian C to Insurance Co. D. On February 27, 2003, you received a refund check from Insurance Co. D dated February 14, 2003, with a statement that you were not eligible to make a rollover because you are no longer a resident of the United States. This stated reason is not correct.

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Based on the above facts, you request that the Service waive the 60-day rollover requirement with respect to the distribution from your IRA of the Amount A 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 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 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

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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.

Information presented indicates that you could not reasonably satisfy the requirement that Amount A be deposited in an IRA within 60 days of the distribution from your SIMPLE IRA. The failure to deposit Amount A into another IRA within the 60-day period was beyond your reasonable control because Custodian C sent you a check to the Incorrect Zip Code, and you received a refund check from Insurance Co. D on February 27, 2003, which was too late to deposit these funds in an IRA trust or custodial account located in the United States. Under these circumstances, 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 the distribution from your SIMPLE IRA of the Amount A to you on December 27, 2002. You are granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount A, in cash, into another IRA in the United States, 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 within the meaning of section 408(d)(3) of the Code.

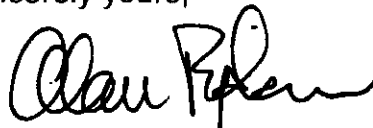
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 by others as precedent.

If you have any questions please contact

at

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