200418052

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List 408.03-00

FEB 2 200

T:EP:RA:UK

LEGEND:

Taxpayer A =

IRA X =

IRA Y =

Amount C =

Company D =

Company E =

Company G =

Account F =

Company H =

Dear

This letter is in response to a request for a private letter ruling dated September 4, 2003, as supplemented by correspondence dated December 9, 2003, submitted on your behalf by your authorized representative 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 penalties of perjury in support of the ruling requested.

Taxpayer A maintained IRA X with Company D. On October 11, 2002, Taxpayer A withdrew Amount C from IRA X because he was concerned that the IRA was losing value. On November 1, 2002, Taxpayer A deposited Amount C into Account F, a savings account in his name at Company E. On March 27, 2003, Taxpayer A withdrew Amount C from Account F at Company E and rolled the funds over into IRA Y with Company H.

Because of health problems, Taxpayer A does not remember whether he was advised at the time of the withdrawal that he was required to roll the amounts over to another IRA within 60 days. Taxpayer A has represented that he has not violated the one-per-year rollover rule of Code section 408(d)(3)(B).

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount C from IRA X, 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^{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)).

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 will consider all relevant facts and circumstances, including: 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 submitted indicates that Taxpayer A received a distribution in the amount of Amount C from IRA X on October 11, 2002. Amount C was deposited into Account F on November 11, 2002 where it remained until March 27, 2003, when Taxpayer A established a rollover IRA, IRA Y, with Company H. The information submitted also demonstrates that Taxpayer A's medical condition caused him to fail to remember or understand the importance of rolling over Amount C to another IRA within 6o days of the distribution from IRA X.

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 C. On March 27, 2003, Taxpayer A established IRA Y, a rollover IRA, with Company H and deposited Amount C into IRA Y. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, we conclude that the 60-day rollover requirement is waived and that Amount C will be considered a rollover contribution 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.

This ruling assumes that IRA X and IRA Y satisfy the qualification requirements of Code section 408 at all times relevant to this transaction.

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

This letter ruling 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 by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact K SE:T:EP:RA:T2, at

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of letter ruling
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