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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG - 4 2004

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Individual A =

IRA X =

Bank B =

Insurance Company I =

Bank C =

Amount H =

Amount I =

Amount J =

Amount L =

Amount K =

This is in response to a request dated May 14, 2004, submitted on your behalf by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated July 20, 2004, supplemented the request

Your authorized representative has submitted the following facts and representations in support of your ruling request:

In , Individual A attained the age of . During the year , prior to September , Individual A maintained an individual retirement account (IRA) referred to hereinafter as IRA X. IRA X was maintained at Bank B. IRA X was invested in a certificate of deposit (CD) with Bank B. The CD matured on September . Prior to that date, Bank B advised Individual A of the forthcoming maturity and of the interest rates it would be able to pay in the event the deposit was renewed. Individual A was dissatisfied with those rates and investigated other possibilities. In pursuit of these possibilities, he checked with Insurance Company I, contacted his long time automobile insurance agent and thereafter met with the agent. He was advised that Insurance Company I had a federal savings bank, Bank C. Individual A then decided to roll over Amount H from IRA X to an IRA account with Bank C.

On September , Individual A received a distribution from IRA X terminating his account. He deposited the distribution on the same day with Bank C and, on the same day, purchased a five year CD with Bank C in Amount H believing it to be a qualified IRA account. Bank C did not follow Individual A's instructions but instead provided him with the paper work for purchasing a non tax qualified CD instead of the forms necessary to establish an IRA. Furthermore, Bank C did not provide Individual A with his CD and Individual A did not see any need to request said CD.

Individual A received a Form 1099-R for 2002 from Bank B in Amount I which reflected the fact that Individual A was receiving Code § 401(a)(9) minimum required distributions in addition to the distribution on September ., which terminated his account with Bank B. He provided the Form1099-R to his income tax return preparer and advised said preparer that Amount H had been rolled over and was thus nontaxable. He reported and paid tax on the distributions in excess of Amount H.

Prior to the September distribution, Bank B was distributing Individual A's required distributions to him on a monthly basis. After September Individual A commenced to receive monthly interest payments from Bank C on his CD. He received a 1099-INT from Bank C in Amount J for which he believed reflected additional Code § 401(a)(9) minimum required distributions. He delivered this form to his tax preparer who did not question whether Amount J appropriately reflected Individual A's required distributions. Individual A's 2003 Form 1099-INT for the CD showed interest of Amount L which caused Individual A to question the matter, and led to his realization that his planned IRA rollover had not gone through as he had anticipated. Amount H remains in Individual A's Bank C CD, and no part of Amount H invested in the CD has been used for any purpose other than an investment.

Individual A's calendar year United States Individual Income Tax Return, Form 1040, indicates that Individual A did not include Amount H in his adjusted gross income for said year, but instead deducted Amount H from Amount K, his total pension and IRA distributions for calendar year

Based on the facts and representations, it is requested that the Service waive the 60-day rollover requirement with respect to the distribution of Amount H.

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 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.

Revenue Procedure 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, but not limited to: (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 Individual A is consistent with his assertion that he attempted to roll over Amount H into an IRA with Bank C. The 1099-R included Amount H but he excluded it on his Federal Income Tax Return. Furthermore, Amount H remains in Individual A's Bank C CD.

Therefore, based on the above, 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 H from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover of Amount H (except as noted below) into an IRA maintained in your name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into another IRA, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts, if any, that were or are required to be distributed by section 401(a)(9) of the Code with respect to calendar years through which have not, at yet, been distributed to him.

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.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

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

Sincerely yours,

Frances V Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose