

200545053



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG 19 2005

U.I.L. 408.03-00

Legend:

Taxpayer A	= *****
Taxpayer B	= *****
IRA X	= *****
Company C	= *****
Amount D	= *****
Individual M	= *****
Company E	= *****
Account F	= *****
Bank G	= *****
IRA Y	= *****
Company K	= *****
Individual S	= *****
Community R	= *****

Dear *****.

This is in response to your letter dated June 11, 2005, as supplemented by correspondence dated July 18, 2005, July 20, 2005, and August 5, 2005, 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 your request.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Company C. Taxpayer A represents that in October 2002, she called Individual M, her financial advisor at Company E, and inquired about borrowing money to purchase a new home. Taxpayer A, who states that she has never owned a home, asserts that she was informed by Individual M that since she had never owned a home she could qualify as a first-time homebuyer and, therefore, would be able to withdraw money from IRA X to purchase a new home. Documentation submitted by Taxpayer A shows that a distribution of Amount D was made from IRA X on October 11, 2002 and deposited into Account F on October 16, 2002. Account F is a joint savings account Taxpayer A maintains with Taxpayer B, her spouse, at Bank G.

Shortly after receiving the distribution from IRA X, Taxpayer A states that Taxpayer B accepted a job offer in another city that ultimately resulted in them relocating. As a result of relocating, Taxpayer A and Taxpayer B decided against purchasing a home in Community R. A memorandum dated November 11, 2002 from Individual S of Community R to Taxpayer A and Taxpayer B shows the pricing information and owner specifications for the home Taxpayer A and Taxpayer B intended to purchase in Community R. You represent that Community R is located approximately 90 miles from city in which Taxpayer B accepted new employment.

Taxpayer A states that after she and Taxpayer B decided to cancel the purchase of a new home, she contacted Individual M and inquired about the procedure for redepositing Amount D back into an IRA. Taxpayer A states that Individual M suggested that she open an IRA with Company K and faxed the application form to her. Documentation submitted by Taxpayer A shows on December 2, 2002, she completed a Company K rollover IRA application establishing IRA Y with a deposit of Amount D.

Taxpayer A asserts that on December 3, 2002, a date that was within the 60-day rollover period, she mailed the application, via certified mail, along with a check in the amount of Amount D to Company K to the address contained in the application package that was faxed to her by Individual M. After mailing the application to Company K, Taxpayer A and Taxpayer B went on vacation for approximately three weeks and did not return home until January 2, 2003. When Taxpayer A checked her mail, she noticed that the letter that she sent to Company K on December 3, 2002 had been returned because of an insufficient address. Taxpayer A contacted Individual M who provided her with the correct post office box number. Taxpayer A states that she remailed the application to

Company K on January 2, 2003. Documentation submitted with the case file shows that Company K deposited Amount D into IRA Y on January 8, 2003.

In May 2004, Taxpayer A and Taxpayer B received notice from the Internal Revenue Service informing them that they failed to include Amount D in income for tax year [REDACTED]. The error committed in mailing the check in the amount of Amount D to Company K resulted in Amount D not being rolled over to another IRA within the 60-day rollover period.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

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 received 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 in 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 included 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)(l) 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(l) 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)(l), 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 in this case shows that a distribution in the amount of Amount D was made from IRA X on October 11, 2002. Taxpayer A represents that she withdrew Amount D from IRA X to use towards the purchase of a new home. Documentation submitted by Taxpayer A also shows that Amount D was deposited into Account F on October 16, 2002. After deciding not to purchase a new home, Taxpayer A decided to roll over Amount D to another IRA.

Documentation submitted by Taxpayer A, to show her intent to complete a rollover within the 60-day rollover period, demonstrates that on December 2, 2002, a date that was within the 60-day rollover period, she completed a Company K rollover IRA application with a contribution in the amount of Amount D. Documentation submitted by Taxpayer A further shows that on December 3, 2002, she mailed, via certified mail, the IRA application and the check in the amount of Amount D to Company K at the address contained in the written instructions provided to her by Individual M. The application package was returned to Taxpayer A because the post office box number for Company K, as provided by Individual M, was incorrect. Taxpayer A did not receive the returned application until after the 60-day rollover period had expired.

As soon as Taxpayer A discovered that Amount D had not been rolled over to another IRA within the 60-day rollover period, she notified Individual M who provided her with the correct address for Company K. Documentation shows that Company K deposited Amount D into IRA Y on January 8, 2003. Even though Amount D was not redeposited into IRA Y within the 60-day rollover period because of errors committed in mailing the IRA application and the check

to Company K, Taxpayer A's completion of the IRA Y application on December 2, 2002, demonstrates her intent to preserve Amount D as part of her retirement savings.

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 D from IRA X. Documentation submitted by Taxpayer A shows that on January 8, 2003, Amount D was contributed to 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, Amount D will be considered rollover contribution within the meaning of section 408(d)(3) of the Code.

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

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.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

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

Sincerely yours,

~~(Signature) Joice E. Floyd~~

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice 437