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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 02 2006

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

IRA D =

Financial Institution E =

Financial Institution F =

Account G =

Account H =

IRA I =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear

This is in response to your request dated April 18, 2005, as supplemented by correspondence dated August 10, September 15, November 21, 2005 and June 15, 2006, 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 penalty of perjury in support of the ruling requested.

Taxpayer A, age 69, and Taxpayer B, age 65, ("Taxpayers A and B") represent that they received distributions from IRA C and IRA D, respectively, totaling Amount 1 and Amount 2, respectively. Taxpayers A and B assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a lack of understanding of the IRA rollover rules and the failure of Financial Institutions E and F to advise them of such rules, which led to Amount 1 and Amount 2 being placed into non-IRA accounts.

Taxpayers A and B maintained IRA C and IRA D, respectively, with Financial Institution E. On July 28, 2004, seeking to rollover their IRAs from mutual funds to certificates of deposit ("CDs"), Taxpayers A and B received distributions from IRA C and IRA D, respectively, in Amount 1 and Amount 2, respectively. Taxpayers A and B represent that Financial Institution E did not provide any information concerning the rollover rules. On August 4, 2004, Taxpayers A and B went to Financial Institution F and purchased a non-IRA CD in Amount 3 (Amount 1 + Amount 2 – administrative fees) in their joint names, Account G. Taxpayers A and B represent that Financial Institution F did not advise them of the IRA rollover rules. The mistake was discovered during the preparation of their 2004 tax return. Upon discovery of the mistake, Taxpayers A and B took an early withdrawal from the CD and deposited Amount 4 in IRA I for Taxpayer B, and Amount 5 in Account H, a non-IRA savings account, for Taxpayer A. Amount 4 was deducted as a 2004 IRA contribution for Taxpayer B on Taxpayers A and B 2004 tax return.

Based on the facts and representations, Taxpayers A and B request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount 1 and Amount 2 contained in section 408(d)(3) of the Code.

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.

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), 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.

The information presented and documentation submitted by Taxpayers A and B is consistent with their assertion that their failure to accomplish a timely rollover was caused by their failure to understand the rollover rules. However, the inability to accomplish a rollover of Amount 1 and Amount 2 was not the result of any of the circumstances described in Rev. Proc. 2003-16; the ability to complete a rollover was at all times within the control of Taxpayers A and B. The Service notes that Taxpayers A and B failed to inform Financial Institution F that the distributions were from an IRA, deposited the funds into a non-IRA joint account and did not contact a tax professional prior to the distributions.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA C and Amount 2 from IRA D with Financial Institution E. Thus, the Service declines to treat Taxpayer B's contribution of Amount 4 into IRA I on March 21, 2005, as a valid 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 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 ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact , SE:T:EP:RA:T1, (ID# ) at .
Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose, Notice 437

cc: