200747021

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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

AUG 28 2007

Uniform Issue List: 408.03-00

Legend:

Taxpayer A	=	
Account B	=	
Account C	=	
Account D	=	
Financial Institution E	=	
Financial Institution F	=	
Financial Institution G	=	
Financial Institution H	=	
Amount 1	=	

Dear :

This letter is in response to a request for a letter ruling dated January 4, 2007, as supplemented by additional information dated March 20, 2007, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code") regarding the distribution of Amount 1 from Account B maintained with Financial Institution E.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 57 at the time of the distribution of Amount 1 from Account B, represents that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to an error by Financial Institution E. Amount 1 was deposited by Taxpayer A into Account C, and subsequently transferred to Account D. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that, on September 27, 1995, she attempted to transfer funds from her tax-sheltered annuity under Code section 403(b), maintained with Financial Institution H, into an individual retirement annuity (IRA) under Code section 408(b), sponsored by Financial Institution E. On the application to open the IRA, Taxpayer A selected "rollover IRA". However, the funds were deposited into Account B, a non-IRA annuity. Taxpayer A represents that, on or about August 2, 2004, she attempted to transfer Amount 1 in Account B to an IRA sponsored by Financial Institution G. Financial Institution E sent Taxpayer A a copy of a letter dated August 18, 2004, from Financial Institution E informing Financial Institution G that the assets in Account B could not be transferred to a traditional IRA sponsored by Financial Institution G because Account B was an annuity contract that was not an IRA annuity under Code section 408(b). On October 20, 2004, Account B was closed and, on October 25, 2004, Taxpayer A was mailed a check totaling Amount 1. On November 3, 2004, Taxpayer A deposited the check totaling Amount 1 into Account C, a non-IRA, sponsored by Financial Institution F. On November 11, 2004, Amount 1 was transferred to Account D, also a non-IRA sponsored by Financial Institution G. Taxpayer A represents that Financial Institution E erred when it deposited the proceeds received from Taxpayer A's 403(b) tax-sheltered annuity contract into Account B, a non-IRA annuity. By letter dated November 6, 2006, Financial Institution E acknowledged it opened Account B as a non-IRA annuity in error.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of Amount 1.

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 the documentation submitted by Taxpayer A confirms that the distribution from her tax-sheltered annuity under section 403(b) was deposited in error, on September 29, 1995, into a non-IRA (Account B) sponsored by Financial Institution E, prior to the effective date of Code section 408(d)(3)(I).

To be eligible for a waiver of the 60-day rollover period, section 3.04 of Rev. Proc. 2003-16 provides that the distribution must have occurred after December 31, 2001. Section 3.04 of the Rev. Proc. also provides that the distribution must be made from an individual retirement plan described in Code section 408(a) or (b), a plan qualified under section 401(a), a section 403(a) annuity plan, a section 403(b) tax-sheltered annuity, or a section 457 eligible governmental plan. Amount 1 was not distributed from an IRA annuity under Code section 408(b) on October 25, 2004. Since Amount 1 was distributed from a non-IRA annuity (Account B), it can not be considered a rollover contribution within the meaning of section 408(d)(3). Therefore, the requirements of Rev. Proc. 2003-16 are not satisfied and the waiver provisions of Code section 408(d)(3)(I) do not apply in this case. Thus, the Service has no authority to grant relief.

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.

If you wish to inquire about this ruling, please contact , SE:T:EP:RA:T1, I.D. # , at .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437