



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

200953030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT - 8 2009

SET:EP:RA:T3

Uniform Issue List: 408.03-00

Legend:

- IRA X =
- Account D =
- Amount A =
- Date 1 =
- Date 2 =
- Company A =
- Company B =

Dear:

This is in response to a request you submitted on July 3, 2009, supplemented by information on August 10, 2009, 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:

You are 59 years old. You had an Individual Retirement Arrangement (IRA), IRA X, which was maintained by Company A. You represent that you intended to roll over the distribution of Amount A from IRA X within the 60-day period prescribed by section 408 (d) (3) of the Code but were unsuccessful. Your intent was to roll over Amount A from IRA X to an IRA with Company B. You assert that your failure to accomplish this rollover of Amount A was due to an error caused by an employee of Company B.

You assert that your intent was to complete a rollover of Amount A to an IRA established with Company B. You explain that you withdrew Amount A from IRA X, an IRA maintained by Company A, and deposited Amount A with Company B on Date 1. On Date 1, Company A issued you a check for Amount A and you personally delivered the check to Company B on Date 1. In order to complete this transaction, you endorsed the check for Amount A over to Company B and explained to an employee of Company B

that your intent was for Amount A to be placed into an IRA. You state that you did not complete any other paperwork as part of this transaction. The employee of Company B erroneously placed Amount A into Account D, a non-IRA account.

You discovered this error on Date 2 when you were contacted by the Internal Revenue Service regarding a proposed change to your tax liability. You state that Amount A remains in Account D and that Amount A has not been used for any other purpose.

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

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) (I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408 (d) (3) (A) 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) (l) of the Code, 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 you submitted is consistent with your assertion that your failure to accomplish a timely rollover was due to an error caused by an employee of Company B.

Therefore, pursuant to section 408 (d) (3) (l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. You are granted a period of 60 days from the issuance of this letter ruling to contribute Amount A into a rollover IRA. 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 A will be considered a 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 expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please address all correspondence to SE:T:EP:RA:T3.

Sincerely,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

cc: