201007080

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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

NOV 24 2009

Uniform Issue List: 408.03-00

Legend:

Taxpayer A	=
IRA B	=
IRA C	=
Financial Institution D	=
Account E	=
Financial Institution F	=
Account G	=
Financial Institution H	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=

Dear :

This letter is in response to a request for a letter ruling dated March 18, 2008, as supplemented by additional information dated January 12 and 27, 2009, from your authorized representative, 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 distributions of Amount 1 and Amount 2 from your individual retirement accounts, IRA B and IRA C, respectively, maintained with Financial Institution D.

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

Taxpayer A, age 62, represents that he withdrew Amount 1 and Amount 2 from IRAs B and C, respectively. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to an error by a financial institution.

Taxpayer A maintained IRAs B and C, individual retirement accounts under section 408(a) of the Code, with Financial Institution D. Taxpayer A was not happy with the performance of IRAs B and C and also had privacy concerns with his investment advisor regarding these accounts. On July 31, 2006, Taxpayer A decided to transfer Amount 1 and Amount 2 from IRAs B and C, respectively, to an IRA maintained with Financial Institution H. Prior to an overseas trip, Taxpayer A represents that he met with his investment advisor at Financial Institution D and completed the necessary forms to transfer Amounts 1 and 2 to his checking account (Account E) maintained with Financial Institution F. When he gave instructions to Financial Institution D, Taxpayer A represents that he assumed the transfer would be to another IRA. By telephone call, while overseas, Taxpayer A requested that IRAs B and C be closed and Amounts 1 and 2 be transferred to his checking account (Account E). Taxpayer A also represents that the funds were to be immediately transferred as a rollover IRA from Account E to an IRA maintained with Financial Institution H. Taxpayer A further represents that he used Account D as an intermediate step because of privacy concerns. There is no evidence that, prior to the transfer, Taxpayer A opened an IRA with Financial Institution H. Taxpayer A states that he intended to transfer Amount 4 to an IRA and presumed his oral instructions to Financial Institutions D and H were adequate to complete a rollover. However, since Taxpayer A did not have an existing IRA with Financial Institution H, Amount 4 was transferred to Account G, a non-IRA "trading account." It is represented that the error was not discovered until September of 2007, when Taxpayer A's 2006 tax return was being prepared. None of the financial institutions involved have acknowledged any mistake on their part.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 4.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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) 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 the documentation submitted in this case indicates that Taxpayer A withdrew Amount 1 and Amount 2, from IRA B and IRA C respectively, with the stated intent to rollover Amount 4 to an IRA with Financial Institution H but never established an IRA with Financial Institution H prior to the transfer. Instead, Amount 4 was deposited into a “trading account” at Financial Institution H.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely rollover Amount 1 and Amount 2. The information presented indicates that the failure to rollover Amount 3 into an IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B and Amount 2 from IRA C and thus Amount 1 and Amount 2 will not be considered valid rollover contributions within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

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 (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

cc: