201008048

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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

DEC 03 2009

Uniform Issue List: 408.03-00

T:EP:RA:T1

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Legend:

Taxpayer A = **********

IRA B = **********

IRA C = **********

Financial Institution D = **********

Financial Institution E = **********

Account F = **********

Account G = **********

Amount 1 = $**********

Amount 2 = $**********

Dear **********:

This letter is in response to a request for a letter ruling dated **********, as modified and supplemented by additional correspondence dated **********, 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").

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

Taxpayer A, age **, asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to his concerns regarding the financial stability of the institutions holding his IRAs and his reliance on those institutions to inform him of the 60-day rollover period which led to Amount 1 and Amount 2 being placed in non-IRA accounts.

Taxpayer A maintained IRA B and IRA C, both individual retirement annuities under section 408(b) of the Code, with Financial Institutions D and E, respectively. In **********, Taxpayer A, concerned with the financial stability of these institutions, requested that IRA B and IRA C be closed and received a total distribution. Upon receipt of the distributions of Amount 1 and Amount 2, Taxpayer A deposited the funds into Account F, a non-IRA CD, and Account G, his personal checking account. In 2009, after the expiration of the 60-day period, Taxpayer A received a Form 1099-R on the distributions and realized his mistake. Taxpayer A represents that no one at the various Financial Institutions advised him of his ability to rollover the distributions.

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 distributions of Amount 1 and Amount 2.

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 Amounts 1 and 2 from IRAs B & C because he was concerned with the financial stability of Financial Institutions D & E. However, Taxpayer A failed to roll the distributions to qualified rollover IRAs because no one at the financial institutions informed him of his ability to do so and because he did not understand the IRA rollover rules.

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 Amounts 1 and 2. Taxpayer A asserts that the failure of the financial institutions to advise him that the distributions would be taxable or that he had rollover options, rise to the level of financial institution error. However, the Code imposes no such obligation on IRA custodians. Absent actions on the part of a financial institution or financial advisor undertaking such an obligation, (e.g. where a taxpayer has erroneously been advised that the rollover period is 90 days), we will not recognize this failure as financial institution error. As such, the information presented indicates that the ability to redeposit Amounts 1 and 2 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 distributions of Amount 1 from IRA B and Amount 2 from IRA C. Thus Amounts 1 and 2 are not to 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.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service does not waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B and Amount 2 from IRA C.

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 **********, (I.D. #**********), at (***) ***-****.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1