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

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MAR 07 2005

Uniform Issue List 408.03-00

SE:T:EP:RA:T3

Legend

Taxpayer A = ***

Bank B = ***

Bank C = ***

Amount D = ***

IRA X = ***

IRA Y = ***

IRA Z = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Dear ***:

This is in response to your letter dated December 17, 2004, supplemented by faxed information dated January 13, 2005, January 31, 2005, February 18, 2005, and February 23, 2005, in which you request 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:

Prior to Date 1, 2004 Taxpayer A held three individual retirement accounts (IRAs) X, Y, and Z, respectively with Bank C. It is represented that these IRAs were all maintained in accordance with Code section 408(a). Bank C was the Trustee for

IRAs X, Y and Z. On Date 1, 2004, Taxpayer A completed the documentation to withdraw Amount D (an aggregate amount consisting of three checks that represent lump sum distributions from Taxpayer A's three respective IRA accounts) at Bank C. This was done to facilitate a rollover of these respective funds into a new IRA account with a better interest rate. On or about Date 1, 2004, Taxpayer A received Amount D from Bank C.

Taxpayer A represents she erroneously believed that the 60-day period ended on Date 2, 2004 (based upon there being 30 days in each month). Since Date 2, 2004 was a holiday ***, she attempted to roll over the funds received from the IRA distributions at Bank C into a new IRA account at Bank B on Date 3, 2004. A banking officer at Bank B informed Taxpayer A that the 60th day of the rollover period was Date 4, 2004 and therefore, Bank B would not accept these funds for deposit into a IRA rollover account since Date 3, 2004 was three days beyond the rollover period found in Code section 408(d)(3)(A). The banking officer called Bank C on behalf of Taxpayer A but Bank C refused to take the distribution checks back.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRAs X, Y, and Z because the failure to waive such requirement would be against equity or good conscience.

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 should 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) 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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.

Taxpayer A requested three lump-sum distribution checks from IRAs X, Y, and Z (totaling Amount D) for the eventual purpose of redepositing said amount D into another IRA promising a better rate of return. The information presented by Taxpayer A indicates that Taxpayer A did not timely roll over the funds represented by the three lump-sum IRA distribution checks dated Date 1, 2004 within the 60-day period prescribed by 408(d)(3)(A). Taxpayer A has asserted that her failure to timely roll over Amount D was caused by a mistake on the part of Taxpayer A in calculating the 60-day period which caused her to miss the 60-day deadline by *** days. Taxpayer A's attempt to redeposit the rollover funds on Date 3, 2004 (first business day following what she believed to be the 60th day) provides evidence that supports Taxpayer A's assertions that she erred in calculating the 60-day rollover period, and that it was her error in calculating the 60-day period that caused her to fail to accomplish a timely rollover of Fund D.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Taxpayer A is granted a period of 60 days from the date of this ruling letter to redeposit Amount D into a new IRA described in Code section 408(a). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, said contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code), if any.

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 ***, at ***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

/s/

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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