



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 26 2005

200542040

Uniform Issue List: 408.03-00

SE: T: EP: R.A.TI

Legend:

Taxpayer =

Custodian A =

Custodian B =

IRA C =

Account D =

Account E =

Account F =

Amount G =

Amount H =

Amount I =

Dear :

This letter is in response to a request for a letter ruling dated January 26, 2005, as supplemented by additional information dated March 1, May 16, and June 8, 2005, 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:

The Taxpayer is 77 years old and her spouse is 80. The Taxpayer maintained IRA C, an Individual Retirement Account ("IRA") under Code section 408(a), with Custodian A. The assets in IRA C were primarily invested in mutual fund stocks. When the account balance declined in value, the Taxpayer decided to change investments by transferring the assets of IRA C to Custodian B. The Taxpayer requested a total distribution of IRA C and received a check dated August 6, [REDACTED], for Amount G, from Custodian A. The check did not indicate that the funds were from an IRA. On August 31, [REDACTED] the Taxpayer, intending to complete a rollover, deposited Amount G in Account D with Custodian B. Account D was a non-IRA joint account with the Taxpayer's spouse. The confusion apparently occurred because the Taxpayer opened two other non-IRA accounts with Custodian B at the same time and mistakenly included the proceeds from IRA C with the non-IRA accounts and Custodian B opened a third non-IRA account with the IRA proceeds. During the first week of November, [REDACTED] while preparing to take a minimum distribution under Code section 401(a)(9), the Taxpayer discovered that Account D was a non-IRA account. The Taxpayer received a minimum distribution of Amount H for the 2004 taxable year.

After discovering the mistake, the Taxpayer opened an IRA account with Custodian B and requested that the IRA funds deposited in Account D be transferred to Account E. Since the 60 day deadline had expired, Custodian B refused her request. The Taxpayer then moved the funds from Account D, a non-IRA joint account, to Account F, a non-IRA account in her name only. The balance of Account D (Amount G less Amount H) has remained in Accounts D and F at all times.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount I because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) provides that section 408(d)(1) 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to Code 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 by the Taxpayer indicates that she wished to change investments and intended to roll over the proceeds of IRA C to another IRA. The mistake occurred because of the confusion that occurred between the Taxpayer and

Custodian B when the Taxpayer transferred her IRA distribution with other non-IRA assets.

The failure to indicate on the distribution check that it was an IRA distribution contributed to the confusion when the funds were deposited into a non-IRA account. The mistake was not discovered until after the expiration of the 60-day rollover period. Amount I has continuously remained in Account F and Taxpayer took appropriate and reasonable steps to rectify the mistake.

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 I (Amount G less Amount H) from IRA C with Custodian A. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3).

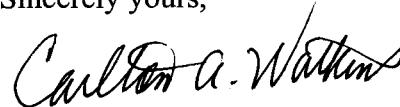
This ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

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 [REDACTED], SE:T:EP:RA:T1, I.D.
[REDACTED] at [REDACTED]

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437