20060104 1

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 1 2 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A...

Bank M...

Company N..

Amount P ....

IRA X..

Dear :

This is in response to a letter dated April 21, 2005, as supplemented by correspondence dated August 7, 2005, and August 17, 2005, 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"). You submitted the following facts and representations under penalty of perjury in support of your request.

Taxpayer A, age 57, represents that she received a distribution from IRA X in Amount P. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a misunderstanding with Company N. Taxpayer A represents that Amount P has not been used for any purpose other than the intended rollover.

Taxpayer A maintained IRA X with Bank M. On May 24, [redacted] Taxpayer A took a distribution from IRA X in Amount P and, on the same date, purchased shares of stock in her employer, Company N. The stock of Company N is not publicly traded. Taxpayer A intended to roll over Amount P into an IRA investing in shares of stock of Company N. In the absence of clear guidance from Bank M and Company N, Taxpayer A mistakenly believed that she had rolled over Amount P into an IRA with Company N as the custodian. This misunderstanding was partly due to the fact that both the stock subscription agreement with Company N and the stock certificate issued to Taxpayer A by Company N specifically referenced an IRA as owner of the shares.

In preparing her [redacted] tax return, in February of [redacted] Company N informed Taxpayer A that it was not, in fact, an IRA custodian for her shares. When Taxpayer A located a custodian that would hold the shares of Company N in an IRA, Taxpayer A submitted this request for a waiver.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to the distribution of Amount P.

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.

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) 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)(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) 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 (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 and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by a misunderstanding with Company N.

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 P from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount P into an IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount P will be considered a rollover contribution within the meaning of section 408(d)(3).

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 that 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 .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter ruling
Notice 437