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

200543029

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 06 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

Employer C =

Plan D =

Custodian E =

IRA F =

IRA G =

IRA H =

IRA I =

Account J =

Account K =

Amount L =

Amount M =

Dear :

This letter is in response to a request for a letter ruling dated March 21, 2005, as supplemented by additional information dated May 12, 2005, June 20, 2005, and July 25, 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:

Taxpayer A and Taxpayer B ("Taxpayers A and B") worked for Employer C and participated in Plan D. On January 4, 2002, Taxpayer B terminated employment. On February 25, 2002, Taxpayer A terminated employment. On March 11, 2002, Taxpayers A and B transferred their account balances in Plan D to Individual Retirement Accounts ("IRA") under Code section 408(b), IRA F and IRA G, respectively, with Custodian E. IRA F and IRA G invested in annuity contracts. On September 13, 2002, in order to obtain lower management fees and surrender charges, the balances in IRA F and IRA G were transferred to Individual Retirement Accounts ("IRA") under Code section 408(a), IRA H and IRA I, respectively, with Custodian E. IRA H and IRA I invested in mutual fund stocks.

Being uncomfortable with mutual fund investments, Taxpayers A and B decided to roll over their account balances in IRA H and IRA I, respectively, to IRAs which invested in certificates of deposit. They received distribution checks dated November 24, 2003, from IRA's H and I. On December 2, 2003, Taxpayers A and B requested roll over of these distributions into IRAs investing in certificates of deposit. Instead, their account balances were inadvertently transferred to Account J and Account K, non-IRA accounts. In a letter dated June 15, 2005, to the Internal Revenue Service (Service), Custodian E admitted this was due to an administrative error. The mistake was not discovered until February 10, 2005. Custodian E prepared 1099 forms showing distributions from IRA H and IRA I for the [redacted] taxable year. While copies of these forms were sent to the Service, Taxpayers A and B never received them. None of the amounts have been dispersed for personal use and the full amounts still remain in the non-IRA Accounts J and K.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount L and Amount M 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 Taxpayers A and B demonstrates that their failure to rollover Amount L and Amount M was due to an administrative error by Custodian E. Because of a mistake by Custodian E, the balances in IRA H and IRA I were transferred to non-IRA accounts. The mistake was not discovered until after the expiration of the 60-day rollover period. Amount L and Amount M have remained at all times in Account J and Account K, respectively.

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 L from IRA H and Amount M from IRA I with Custodian E. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to make their 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 taxpayers 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 , SE:T:EP:RA:T1, I.D. [redacted] at [redacted]

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437