



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200423042

Uniform Issue List: 408.03-00

MAR 9 2004

T. EP. RA. T2

LEGEND:

Taxpayer A = *****
Taxpayer B = *****
IRA X = *****
IRA Y = *****
Amount C = *****
Amount D = *****
Company E = *****
Bank F = *****
Account G = *****
Account H = *****

Dear *****:

This letter is in response to a request for a private letter ruling dated June 16, 2003, submitted on your behalf by your authorized representative, as supplemented by additional correspondence dated February 10, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3)(I) of the Internal Revenue Code (the "Code").

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

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Taxpayer A and Taxpayer B maintained both IRA and non-IRA investment accounts with Company E. Taxpayer A and Taxpayer B became unhappy with the performance of the investment professionals at Company E and, on October , instructed Company E to sell all of their investments and convert them to cash. On November , Taxpayer A and Taxpayer B received five separate checks amounting to \$ from Company E as a result of their prior instructions to Company E. You represent that all of checks were from the Company E's General Disbursement Account and none indicated that the checks were from IRAs.

On November Taxpayer A and Taxpayer B deposited the five checks at Bank F. It appears from the documents submitted with your request, that Taxpayer A opened a new account at Bank F, Account G, to which he deposited a check in the amount of Amount C. It appears from the documents submitted with your request, that Taxpayer B opened a new account at Bank F, Account H, where she deposited a check in the amount of Amount D. Account G and Account H are savings accounts. The remaining three checks were deposited into existing accounts Taxpayer A and Taxpayer B maintained at Bank F.

During a visit with their tax preparer on February , Taxpayer A and Taxpayer B presented two Forms 1099-R issued by Company E. One Form 1099-R was issued to Taxpayer A that showed that Amount C was distributed to him from IRA X. The second Form 1099-R was issued to Taxpayer B that showed that Amount D was distributed to her from IRA Y. Their tax preparer explained to Taxpayer A and Taxpayer B that the Forms 1099-R represented distributions from their IRAs, IRA X and IRA Y. Prior to this date, Taxpayer A and Taxpayer B were unaware that distributions had been made from IRA X and IRA Y. Taxpayer A and Taxpayer B assert that Amount C and Amount D have not been used and that such amounts continue to be held in Account G and Account H, respectively. Taxpayer A and Taxpayer B further assert that they did not rollover any amounts that were excluded under Code section 408(d)(3)(B) prior to the original distributions.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount C and Amount D from IRA X and IRA Y, respectively.

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 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 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 section 408(d)(3)(A) and 408(d)(3)(D) of the Code where 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.

Revenue Procedure 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 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 Taxpayer A and Taxpayer B demonstrates that they did not cash the checks they received from Company E on November . Rather, the information presented demonstrates that on November

Taxpayer A deposited the check representing the distribution from IRA X in the amount of Amount C into Account G, and that Taxpayer B deposited the check representing the distribution from IRA Y in the amount of Amount D into Account H. Amount C and Amount D continue to be held in Account G and Account H, respectively.

Therefore, with respect to your ruling request, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C and Amount D from IRA X and IRA Y. Taxpayer A and Taxpayer B are granted a period of 60 days from the issuance of this ruling to contribute Amount C and Amount D to IRAs. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered valid rollover contributions with the meaning of Code 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, which may be applicable thereto.

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

This ruling 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 by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions, please contact

*****SE:T:EP:RA:T2 *****.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter
Notice of Intention to disclose