200428033

APR 13 2004

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Taxpayer B=

Amount C=

IRA D=

IRA E=

Bank F=

Company G=

IRA H=

IRA I=

Credit Union J=

IRA K=

IRA L=

Dear

This is in response to your letter dated , as supplemented by correspondence dated , 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).

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

Taxpayer A and Taxpayer B (collectively "Taxpayers"), are a married retired couple over years of age who originally owned IRAs D and E. in addition to other investments, at Bank F. On , Taxpayers went to Bank F to discuss existing interest rates as they had some maturing investments on that date at Bank F. After learning the existing rates at Bank F, the Taxpayers considered that the rates were too low and decided to redeem the maturing IRAs D and E at Bank F. Taxpayers requested Amount C from Bank F in order to re-invest Amount C in an investment product that offered the Taxpayers a higher rate of return.

After reading a newspaper investment advertisement. Taxpayers contacted a broker for assistance and on , Taxpayers established IRAs H and I with Company G. There was a misunderstanding between the broker and the Taxpayers about the rate of return on the investment. On , Taxpayers thought that Company G had misrepresented the rate of earnings it would pay on the funds held by the Taxpayers' IRAs H and I.

Therefore, Taxpayers exercised a provision in their IRA agreements with Company G to rescind IRAs H and I. On Taxpayers requested that Company G return Amount C to Taxpayers immediately. Company G experienced some internal difficulties in issuing the check for Amount C to the Taxpayers and the Taxpayers did not receive Amount C until , while at their Florida home, (without any interest) and by that time, the 60-day statutory rollover period had expired.

On , one day after returning to Virginia from their Florida home, Taxpayers deposited Amount C in Credit Union J and established IRAs K and L.

Taxpayers represent that no other amount was distributed from IRAs D and E within the one year period since the original distribution.

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 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), 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 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) 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, 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 Taxpayers demonstrates that the failure to deposit Amount C into an IRA within the statutory 60-day period resulted from the delay that Company G experienced in returning Amount C to Taxpayers after Taxpayers had rescinded IRAs H and I. The failure to waive the 60-day requirement would be against equity or good conscience.

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 C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount C deposited into IRAs K and L on , will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

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 , at . Please address all correspondence to .

Sincerely yours,

/S/ Alan Perry

for , Manager
Employee Plans Technical Group 4

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