



TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

MAR 29 2005

SE:T:EP:RA:TJ

Uniform Issue List: 408.03-00

Legend:

- Taxpayer = *****
Financial Advisor = *****
Investment Firm A = *****
Investment Firm B = *****
Amount C = *****
Amount D = *****
Amount E = *****
Account F = *****
Account G = *****
IRA Account H = *****
Spouse = *****

Dear *****:

This is in response to your letter dated April 20, 2004, as supplemented by additional correspondence dated October 4, 2004, 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 by you under penalty of perjury in support of the ruling requested:

The Taxpayer utilizes the services of the Financial Advisor in matters pertaining to estate planning and investments. In the fall of 2003, the Taxpayer's Financial Advisor recommended that she retitle her single-name accounts as joint accounts with her Spouse. Following this recommendation, the Taxpayer instructed the Financial Advisor to have all of her single-name accounts renamed as joint accounts. The Financial Advisor then forwarded the Taxpayer's instructions to Investment Firm A, the organization maintaining the accounts, and on October 1, 2003, all of the accounts held in the Taxpayer's name by Investment Firm A were retitled in the joint names of the Taxpayer and her Spouse.

The Financial Advisor's database failed to indicate that two of the Taxpayer's accounts—Account F and Account G—were individual retirement arrangements ("IRAs") established and maintained under the rules of § 408 of the Code. The Financial Advisor acknowledges that a clerical error in his database caused Accounts F and G to be listed incorrectly as non-retirement accounts. Because IRAs may not be held jointly under the rules of the Code, Investment Firm A, without notifying either the Taxpayer or her Financial Advisor, treated the Taxpayer's instructions as a request for the distribution of Amounts D and E from IRA Accounts F and G respectively. The Taxpayer was issued a Form 1099-R for 2003 for Amount C, the sum of Amounts D and E. No funds were actually received or spent by the Taxpayer; they remained in a jointly held account at Investment Firm A. The error was discovered in February 2004, when the Taxpayer met with her Financial Advisor to review her accounts. The Taxpayer has not yet attained age 59½.

After discovery of this error, the Financial Advisor immediately contacted Investment Firm A and requested that the transactions involving Accounts F and G be reversed. Investment Firm A refused to make the change because more than 60 days had elapsed since October 1, 2003, when Amounts D and E were transferred from IRA Accounts F and G respectively, into an account jointly held by the Taxpayer and her Spouse at Investment Firm A. On April 15, 2004, the Financial Advisor was able to transfer Amount D into IRA Account H with Investment Firm B. However, the transfer of Amount D into Account H occurred after the expiration of the 60-day rollover period provided for in Code section 408(d)(3).

Based on the facts and representations presented above, you request that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amounts D and E, 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 IRA rollovers, and provides the rules applicable thereto.

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).

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.

In this case, the Taxpayer relied on the faulty advice of her Financial Advisor who recommended that she retitle all of her single-name accounts as joint accounts with her

Spouse. Following that advice, the Taxpayer caused all of the accounts that she maintained with Investment Firm A to be retitled as joint accounts, including IRA Accounts F and G. Because IRAs may not be held jointly under the rules of the Code, Investment Firm A, without notifying either the Taxpayer or her Financial Advisor, treated the Taxpayer's instructions as a request for the distribution of Amounts D and E from Accounts F and G respectively. The Financial Advisor's database failed to indicate that Accounts F and G were IRA accounts. While Amount D was previously transferred into IRA Account H with Investment Firm B, albeit after the expiration of the 60-day rollover period, none of the funds from Amounts D and E were actually distributed to, or spent by, the Taxpayer. These funds remained in accounts either at Investment Firm A or Investment Firm B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the October 1, 2003, distribution of Amount C (the total of Amounts D and E) from IRA Accounts F and G. By April 15, 2004, Amount D had been contributed to IRA Account H. The Taxpayer is granted a period of 60 days from the date of issuance of this ruling letter to contribute all or a portion of Amount E into an IRA described in section 408. 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 rollover contributions 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 which may be applicable thereto.

Pursuant to a Power of Attorney on file with this office, a copy of this ruling letter has been sent to your authorized representative.

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 *****
 ***** Please address all correspondence to
 SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
 Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose (Notice 437)
- ▶ Copy of Letter to Authorized Representative