



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T3

OCT 20 2003

Legend:

- Custodian A = *****
- IRA X = *****

- Financial Advisor = *****

- Amount B = \$*****
- Custodian D = *****
- Fund F = *****

Dear *****:

This is in response to a request submitted on your behalf by letter dated July 29, 2003, as supplemented by correspondence dated September 12, 2003, September 15, 2003, and October 15, 2003, for a waiver of the 60-day rollover requirement in section 408(d)((3) of the Internal Revenue Code ("Code").

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

You maintained IRA X with Custodian A. After a phone conversation with your Financial Advisor, you decided to rollover IRA X to a Roth IRA with Custodian D. You also discussed investing some non-IRA funds with him. You applied for a distribution from your IRA and received a check of Amount B dated February 14, 2002. You did not cash the check. You forwarded the check representing Amount B along with other non-IRA money to your Financial Advisor. He forgot that part of the funds he received from you came from an IRA distribution and were supposed to be invested in a Roth-IRA. He invested all of the funds you gave him in Fund F, a non-IRA account. Your Financial Advisor submitted a signed statement to us dated September 12, 2003, acknowledging this error.

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In early 2003, and prior to April 15, your accountant informed you that you owed taxes relating to the early distribution from IRA X, and you informed your Financial Advisor of the mistake.

It is represented that the IRA X funds originally came from an employee stock ownership plan, but that the rollover to IRA X was not within 12 months of the distribution of Amount B.

You propose to transfer Amount B from Fund F to Custodian D to be invested in an individual retirement account described in section 408(a) of the Code.

Based on the above facts, a ruling was requested by your authorized representative that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B in order that you can rollover Amount B into an IRA.

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.

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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 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; 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.

It is represented that the 1-year rollover limitation under section 408(d)(3)(B) of the Code does not apply in this case.

Information you presented shows that the rollover of funds from IRA X was not made within 60 days because of an error committed by a third party. The IRA funds were put in a non-IRA fund and were not used for other purposes. Under these circumstances you could not reasonably satisfy the requirement that Amount B be deposited in an IRA within 60 days of the distribution from IRA X. The failure to deposit Amount B into another IRA within the 60-day period was beyond your reasonable control, and 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 that part of the distribution of IRA X of the Amount B. You are granted a period of 60 days from the issuance of this ruling letter to transfer Amount B into another IRA, provided all other requirements of section 408(d)(3) of the Code are satisfied, except the 60-day requirement with respect to such contribution, then, this amount will be considered a rollover contribution with 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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you have any questions please contact

at

Sincerely yours,



Alan C. Pipkin, Jr., Manager
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437