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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAY 25 2004

Uniform Issue List: 408.03-00

Legend:

Account A =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =
Amount 5 =
Amount 6 =
Amount 7 =
Bank D =

Dear :

This is in response to a request submitted by letter dated February 12, 2004, as supplemented by additional information dated May 5, 2004, from your authorized representative, for a ruling to waive 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:

You maintained Account A, an Individual Retirement Account ("IRA") described under section 408(a) of the Code. Because of poor investment performance, you desired to change investments. On _____, you received a total distribution of your IRA Account A, totaling Amount 1. Amount 2 was received in two checks (one for Amount 4 and one for Amount 5) and Amount 3 represented Federal income tax withheld.

On _____, you deposited the two checks totaling Amount 2 in Bank D with the intention of completing an IRA rollover. Amount 4 was used to purchase a certificate of deposit and Amount 5 was deposited into a savings account. You represent, through your authorized representative, that you did not specifically request the opening of an IRA account because you assumed the distribution check from Account A showed this was an IRA rollover. The new accounts person at Bank D did not see this IRA notation and thus both the certificate of deposit and savings account were registered in the joint names of you and your wife. Later in _____ you withdrew Amount 6 from the savings account set up at Bank D. You included Amount 6 in income on your _____ Federal income tax return.

In March, _____, your tax preparer questioned you about two 1099-R Forms you received regarding the distribution from Account A. After reviewing the accounts at Bank D, it was discovered that these accounts were non IRA accounts. Attempts to have Bank D reclassify these accounts as IRA accounts have failed.

Based on the above facts, you, through your authorized representative, request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount 7 (Amount 1 reduced by Amount 6) that you received from Account A and authorize its deposit into an IRA, 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) 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.

The information presented by you indicates that you intended to roll the distribution from Account A into an IRA with Bank D. You feel that Bank D erred in depositing the distribution into non IRA accounts. Under these circumstances, you could not reasonably satisfy the requirement that funds totaling Amount 7 (which equals Amount 1 less Amount 6) be deposited in an eligible IRA within 60 days of the distribution from Account A.

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 7. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount 7 to an IRA. 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).

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 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
at

Sincerely yours,

A handwritten signature in black ink, appearing to be a stylized 'J' or 'K' with a long horizontal stroke extending to the right.

Manager

Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: