



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 26 2005

200542039

Uniform Issue List: 408.03-00

SE. T. EP. R. A. T. I

Legend:

Taxpayer A =

Taxpayer B =

Custodian D =

Custodian E =

Company M =

Company N =

Plan O =

IRA X =

Amount 1 =

Dear [REDACTED]

This letter is in response to a request for a letter ruling dated January 4, 2005, as supplemented by additional correspondence dated April 12, April 15, May 6, June 6, July 19, July 20, and July 21, 2005, from your authorized representative, in which you have applied for a waiver of 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:

Taxpayer A is a terminated employee of Company M, and participated in Plan O, a 401(k) plan. Custodian D was the custodian of Plan O.

In late 2002, with the approval of Taxpayer A, Taxpayer B, the spouse of Taxpayer A, contacted Custodian D to discuss the options relating to Taxpayer A's benefit under Plan O. Specifically, Taxpayer B wished for Taxpayer A's benefit to be rolled over into an individual retirement account ("IRA") under Code section 408(a) so that the IRA could invest in an external hedge fund. Representatives of Custodian D indicated that such an investment was possible in IRAs maintained by Custodian D. The most important condition of establishing an IRA with Custodian D was the ability to invest the IRA in this hedge fund. Had Custodian D informed Taxpayer B that such an investment was not available for an IRA with their company, he would have sought a different custodian for Taxpayer A's retirement assets.

On December 13, 2002, Taxpayer A established IRA X with Custodian D and rolled over her distribution from Plan O. On December 31, 2002, Taxpayer A went to Custodian D to complete the paperwork for IRA X to make the desired investment in the hedge fund. A representative of Custodian D presented to Taxpayer A the form for her to sign. To the best of Taxpayer A's recollection, except for the signature, the form was completed entirely by the representative of Custodian D. Taxpayer A believed this form would authorize the wire transfer of her IRA X assets to the desired investment within IRA X. Taxpayer A later discovered that the form presented to her was an "IRA Single Withdrawal Request Form".

On January 2, 2003, Custodian D, acting on the instructions of the above form, wired Amount 1 from IRA X to Custodian E as broker for forwarding to Company N. Company N placed these funds in an investment account entitled "Taxpayer A's IRA". Subsequent financial statements received by Taxpayer A continued to indicate that the account was an IRA account. Taxpayer A was unaware of the mistake until early 2004 when Taxpayer B again contacted Custodian D about transferring another 401(k) plan benefit into IRA X. It was at this time that Taxpayers A and B discovered that IRA X had been closed and Amount 1 was transferred to a non-IRA account with Company N. This amount remains in this non-IRA account.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount 1 because failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) 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).

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 Code 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.

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The information presented by Taxpayer A demonstrates that Taxpayer A intended to change investments within IRA X and relied on Custodian D to effectuate the transfer. Because of a miscommunication between Taxpayer A and Custodian D, Taxpayer A established IRA X with Custodian D believing that the IRA could be invested in a specific external hedge fund when, in fact, this was not the case. Instead, to effectuate the transfer to the hedge fund, Custodian D transferred Amount 1 from IRA X to Company N and this amount was placed in a non-IRA account, causing Taxpayer A to have inadvertently taken a distribution of Amount 1 from IRA X in the process. The mistake was not discovered until after the expiration of the 60-day rollover period.

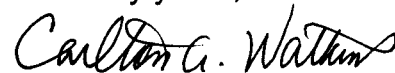
Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X with Custodian D. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution 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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact ***, SE:T:EP:RA:T1, .

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437