



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

200608028

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

NOV 28 2005

UICs: 408.00-00  
408.03-00

SE: T: EP: RA: T3

**LEGEND:**

Taxpayer A:

Taxpayer B:

City E:

City F:

State G:

State H:

Company S:

Company T:

Company U:

Company V:

Bank U:

Bank T:

IRA X:

Amount 1:

Amount 2:

Amount 3:

Date 1:

200608028

Date 2:

Date 3:

Date 4:

Date 5:

Month 1:

Dear [REDACTED]:

This is in response to the letter received by the Internal Revenue Service on or about [REDACTED], as supplemented by correspondence dated [REDACTED], and [REDACTED], in which you, through your authorized representative, request an extension of the 60-day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") applicable to individual retirement accounts ("IRAs"). Your request is based on the following facts and representations.

Taxpayer A, whose date of birth was [REDACTED] is a resident of City F, State H. Taxpayer A is married to Taxpayer B. Taxpayer A is the owner of an individual retirement account ("IRA"), IRA X, with Bank U.

During calendar year [REDACTED], Taxpayer A discussed the possibility of using a portion of his IRA X funds to purchase an interest in Company T with a representative of Company S, an affiliate of Company U. Company S is based in City E, State G. Taxpayer A was advised by said Company S representative that said investment could be made in an IRA, but the Company S representative did not advise him that Company S would not act as a custodian of an IRA holding an interest in Company T.

It has been represented that Taxpayer A advised representatives of Bank U that he intended to invest a portion of his IRA X in Company T, and that he intended to effectuate the investment by means of a trustee to trustee transfer (or transfers) into another IRA that would hold his Company T interest. Bank U assisted Taxpayer A in completing the necessary paperwork to accomplish the investment.

Taxpayer B indicated that she wanted the investment to be in the name of Taxpayers A and B, jointly, with right of survivorship. As a result, the investment

in Company T was set up in the names of Taxpayers A and B. Neither Bank U nor Company S advised Taxpayer A that an IRA could not be held jointly.

An affidavit submitted by Taxpayer A in conjunction with this letter ruling request provides, in relevant part, that he advised Bank U of his intent to use his IRA X distributions to invest in Company T, but that Bank U did not advise him that he would need to obtain a new IRA custodian to hold his IRA funds invested in Company T. The affidavit also asserts that Company S did not advise him that he would need an authorized IRA custodian to hold his investment in Company T.

During calendar years [REDACTED], [REDACTED] and [REDACTED] Taxpayer A invested a portion of his IRA X assets in an interest in Company T. It has been represented that Taxpayer A did not receive a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., at any time during calendar year [REDACTED], calendar year [REDACTED] or calendar year [REDACTED] with respect to any amount distributed from his IRA X during said years.

With specific reference to calendar year [REDACTED], Taxpayer A withdrew Amount 1 from IRA X on Date 1, 2002, and withdrew Amount 2 from IRA X on Date 2, 2002. Date 2, 2002, is approximately five (5) months after Date 1, 2002. Amount 1 and Amount 2 total Amount 3. Documentation submitted with this ruling request indicates that on Date 1, 2002, Taxpayer A signed a "Distribution Form" provided by Bank U indicating that he intended to transfer Amount 1 into another IRA. Said "Distribution Form" also provided, in relevant part, that Amount 1 was to be wired to Bank T. A handwritten note, dated Date 5, 2002, which is one (1) day prior to Date 1, 2002, references Taxpayer A's wire instructions and indicates that Taxpayer A had set up an IRA with Bank T.

On Date 3, 2003, Bank U Provided Forms 1099-R dealing with his calendar years [REDACTED] through [REDACTED] IRA X distributions to Taxpayer A. On associated correspondence, Bank U indicated that "...Bank U initially treated these distributions as non-reportable IRA-to-IRA transfers based on your instructions, as evidenced by the IRA Distribution forms that you signed (copies enclosed). Since Bank U recently discovered that you had mistakenly arranged for these funds to be transferred to a personal (non-IRA) account rather than to a successor IRA trustee, we are now required to report these withdrawals to the IRS".

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement found in section

408(d)(3)(A) of the Internal Revenue Code ("Code") with respect to the Date 1, 2002 distribution of Amount 1 from IRA X.

With respect to your ruling request, 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) 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 Taxpayer A demonstrates that the failure of Taxpayer A to make a rollover contribution to an IRA within 60 days of his receiving Amount 1 from IRA X was due to Bank U's failure to follow his instructions to transfer, by means of a trustee to trustee transaction, his Date 1, 2002 IRA X distribution totaling Amount 1 into another IRA set up and maintained in the name of Taxpayer A. Furthermore, the transaction described above whereby Amount 1 was transferred to a non-IRA account set up jointly in the names of Taxpayers A and B occurred due to Bank U's and Company S's not following Taxpayer A's instructions, not advising him that it was necessary for Taxpayer A to obtain the services of a qualified IRA custodian to hold his IRA investment in Company T, and not advising him that an IRA could not be held in joint names. Finally, as noted above, no Forms 1099-R were issued with respect to calendar year 2002 which, if issued, would have alerted Taxpayer A of his failure to timely roll over his Date 1, 2002 distribution from IRA X.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 1 from IRA X on Date 1, 2002. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount no greater than Amount 1 to another IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code 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 \_\_\_\_\_, Esquire, (I.D. # \_\_\_\_\_), at \_\_\_\_\_ (phone-not a toll-free number), or \_\_\_\_\_ (FAX). Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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