



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

201033040

TAX EXEMPT AND
VERNMENT ENTITIES
DIVISION

MAY 28 2010

Uniform Issue List 408.03-00

SE: T.E P; R.A: TY

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Certificate of Deposit Y = xxxxx

Financial Institution D = xxxxx

Individual B = xxxxx

Regular Savings Account = xxxxx

Christmas Club Account = xxxxx

IRA Savings Account = xxxxx

Amount N = xxxxx

Amount O = xxxxx

Amount P = xxxxx

xxxxx

Page 2

Amount Q = xxxxx

Amount R = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Dear xxxxx:

This is in response to a letter dated November 6, 2009, submitted on your behalf by Financial Institution D, as supplemented by correspondence dated January 5 and 7 and February 13, 2010, requesting a letter ruling waiving the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations in support of the above request are submitted under penalties of perjury:

Taxpayer A, age 67, represents that on Date 1, he received a distribution of Amount N from his individual retirement arrangement (IRA X) maintained by Financial Institution D and that he intended to roll over Amount R, a portion of Amount N, into another IRA. Taxpayer A asserts that he failed to roll over Amount R into another IRA due to error by Individual B of Financial Institution D. He further asserts that Amount R has not been used for any purpose.

Taxpayer A maintained IRA X in the form of Certificate of Deposit Y. Certificate of Deposit Y, subject to automatic renewal, was a 36-month certificate with a fixed interest rate. As of its maturity date, Certificate of Deposit Y had an account value of Amount N.

Taxpayer A maintains a 60-month Certificate of Deposit in another IRA at Financial Institution D which is not the subject of this ruling request.

On Date 1, three days following the maturity date of Certificate of Deposit Y, Taxpayer A went to Financial Institution D. His spouse accompanied him to Financial Institution D to assist him with transactions he intended to complete. They met with Individual B, a member service representative. Taxpayer A represents that he requested that Amount O, a portion of Amount N, be distributed to him as follows: 10 percent of Amount O withheld for Federal income tax purposes; Amount P transferred to a regular savings account Taxpayer A held jointly with his spouse (Regular Savings Account) at Financial Institution D; and Amount Q, the remainder of Amount O, distributed to him by check. Taxpayer A represents that Individual B processed Amount O of IRA X in accordance with Taxpayer A's instructions.

XXXXX

Page 3

Taxpayer A represents that upon completion of the processing of Amount O, Individual B requested instructions from him as to the handling of the remaining funds (Amount R) in the IRA. Taxpayer A represents that he informed Individual B that he was looking for the best interest rate possible for the investment of Amount R and that Individual B, in turn, informed him that the best interest rate being offered at Financial Institution D at that time was being earned in the Christmas Club.

Copies of receipts Taxpayer A received on Date 1 from Financial Institution D, which were submitted with this request show, by the time sequence of being printed, that Individual B did complete the transactions regarding the disposition of Amount O prior to initiating any transaction as to Amount R.

Amount R remained in Taxpayer's Christmas Club Account until Date 2, which was more than 60 days after the distribution of Amount R from IRA X. On Date 2, Amount R was transferred from Taxpayer A's Christmas Club Account to Taxpayer A's Regular Savings Account. Taxpayer A represents that he did not realize that Amount R was not in an IRA until he noticed the large increase in his Regular Savings Account and contacted the manager of Financial Institution D about the increase.

A letter from Financial Institution D addressed to the Internal Revenue Service confirms that on Date 1 Individual B misunderstood Taxpayer A's intent to roll over Amount R and/or committed errors while transacting Amount R which resulted in Amount R being deposited into a non-IRA product.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount R from IRA X.

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) of the Code.

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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount R distributed from IRA X was due to error by Individual B, an employee of Financial Institution D.

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 R from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter

XXXXX
Page 5

to contribute Amount R into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount R will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of any dividends earned on Amount R while it was not invested in an IRA.

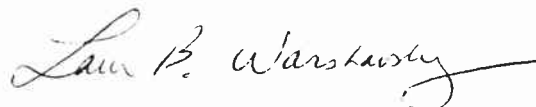
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling 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 xxxxx, I.D. # xxxxx, by telephone at 202-283-xxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose