

**PRIVATE LETTER RULING 8952011, DECEMBER 29, 1990.**

**Letter Ruling 8952011.** *Ineligible rollover contribution amounts are automatically deemed a regular year IRA contribution during a year in which the IRA holder is eligible to make a contribution.*

This is in response to a ruling request dated \* \* \* concerning distributions from your Individual Retirement Account (IRA).

You represent the following facts. In \* \* \*, you received a distribution from a plan qualified under section 401(a) of the Internal Revenue Code and included the distribution in income for \* \* \*. In \* \* \* you deposited \$10,000 of the distribution into a commercial bank account. In \* \* \* 1986, you withdrew the balance of the bank account and deposited \$10,000 into an IRA. Such amounts did not constitute a rollover contribution as described in section 402(a)(5). You withdrew the \$10,000 from the IRA, along with income earned, on 3/30/88. You had compensation of \$722 in 1986, \$3,562 in 1987, and \$943 in 1988. You made no contributions to any IRA during those years.

Based on the foregoing, you request us to rule that the \$10,000 contribution to your individual retirement account (IRA) is not subject to the additional tax under section 4973 of the Code and that a distribution of this contribution is not includable in gross income under section 408(d)(1).

Section 219 of the Code provides that amounts may be contributed to an IRA for any taxable year not in excess of the lesser of \$2,000, or an amount equal to the compensation includable in the individual's gross income.

Section 408(d)(1) of the Code states, in part, that except as otherwise provided in this subsection, any amount paid or distributed out of an IRA shall be included in gross income by the payee for the taxable year in which the payment is received. Notwithstanding any other provision of this title, (including chapters 11 and 12), the basis of any person in such an account is zero. This section was effective for contributions and distributions for taxable years beginning before December 31, 1986.

Section 4973(a) of the Code imposes for each taxable year a tax equal to 6 percent of the amount of the excess contributions to an individual's IRA (determined as of the close of the taxable year). Section 4973(b) provides, in part, that excess contributions are the sum of:

1. the excess of the amount contributed for the taxable year to the IRA (other than, in pertinent part, a rollover contribution described in section 402(a)(5) over the amount allowable as a deduction under section 219 for such contributions and

2. the amount determined under this subsection for the preceding taxable year reduced by the sum of the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1) and the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts for the taxable year.

Accordingly, for the taxable year 1986, the excess contribution under 4973(b)(1) of the Code consists of the contribution of \$10,000, reduced by \$722, the amount allowable as a deduction under section 219. Thus, there is a 6% additional tax of \$557.

Accordingly, for the taxable year 1987, there is an excess contribution of \$7,278 under 4973(b)(2), which is the 1986 excess contribution of \$9,278 reduced by \$2,000, the amount allowable as a deduction under section 219 of the Code. Thus, the 6% additional tax is \$437.

Accordingly, for the taxable year 1988, since the excess contribution amount was distributed before the end of 1988, there is no additional tax under section 4973 of the Code. However, the amount distributed in 1988 from the IRA would be includable in income for the 1988 taxable year under section 408(d)(1).

For your general information, section 219(f)(6) of the Code provides, in part, that the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of the amount of such excess or the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof). Thus, you may be entitled to additional deductions under this section. In order to take advantage of these deductions, you may file Form 1040X to amend the return for the open years in which the deduction is available.

The above ruling is based on the assumption that the IRA otherwise meets the requirements of section 408 of the Code.