

200829030



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

APR 21 2008

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

CE:T:EP:RA:T-1

Control Number:

Legend:

Taxpayer =

IRA A =

IRA B =

Financial Institution C =

Financial Institution D =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated September 8, 2007, as supplemented by correspondence dated October 1, 2007, and November 5, 2007, 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"), regarding the distribution of Amount 3 from your individual retirement accounts (IRAs A and B) maintained with Financial Institution C.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer represents that his failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was caused by stress he was under due to his father's medical condition.

Taxpayer maintained IRAs A and B, individual retirement accounts under section 408(a) of the Code. Taxpayer represents that on July 26, 2006, he withdrew Amounts 1 and 2 (Amount 3 in total) from IRAs A and B, respectively, in order to purchase a home. Amount 3 was deposited in a non-IRA account with Financial Institution D on July 29, 2006. The original settlement date for the purchase of the home was August 30, 2006. A week earlier, Taxpayer's engineer determined that the home had foundation problems possibly resulting from a hurricane in . The engineer as well as Taxpayer's attorney recommended he withdraw his offer of purchase which he did in early September, 2006. Taxpayer was going to redeposit the funds in an IRA but learned on September 4, 2006, that his father had cancer and was due to undergo surgery. Taxpayer flew to on September 14, 2006, to be with his father. Following surgery, his father passed away on September , 2006. Taxpayer's 60-day rollover period ended on September 24, 2006. Taxpayer redeposited Amount 3 in January, 2007, in a non-IRA account with Financial Institution C.

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

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.

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.

Rev. Proc. 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.

Taxpayer has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 prevented him from completing the rollover during the 60-day rollover period of section 408(d)(3)(A) of the Code. In this case, Taxpayer withdrew Amount 3 from IRAs A and B with the intention of using Amount 3 for the purchase of a home. However, Taxpayer became aware by August 30, 2006 that he would not be using Amount 3 to purchase a home, and his 60-day rollover period did not expire until September 24, 2006. The information presented and the documentation submitted by Taxpayer does not substantiate his assertion that his father's medical condition precluded him from timely redepositing Amount 3 in an IRA.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby does not waive the 60-day rollover requirement with respect to the distribution of Amounts 1 and 2 (Amount 3) from IRAs A and B, respectively. Taxpayer is not granted a period of 60 days from the

issuance of this letter ruling to contribute Amount 3 into a rollover IRA. Since the requirements for a waiver of the 60-day rollover requirement under section 408(d)(3)(I) are not met, Amount 3 will not 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.

If you wish to inquire about this ruling, please contact _____, SE:T:EP:RA:T1,
(I.D. # _____), at _____.

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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