



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

200918024

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 04 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:TA

Legend:

Taxpayer A = *****

Guardian E = *****

Individual C = *****

IRA X = *****

Institution W = *****

Account Y = *****

Institution U = *****

Commission G= *****

Amount D = *****

State N = *****

Date 1 = *****

Date 2 = *****

Date 3 = *****

200918024

Date 4 = *****

Date 5 = *****

Dear *****

This is in response to your ruling request dated June 26, 2008, as supplemented by correspondence dated September 4, October 28, November 14, 2008, December 10, and December 19, 2008, in which you request 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 penalties of perjury in support of the ruling requested.

Taxpayer A, age 71, represents through his guardian and spouse, Guardian E, that he received a distribution from IRA X totaling Amount D. Taxpayer A, through Guardian E, asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to mistakes made by Institution W and Institution U.

Taxpayer A, through Guardian E, represents that, on Date 1, Guardian E was appointed as a Guardian of Person and Guardian of Property of Taxpayer A. Through Commission G, a court order subsequently issued by the Supreme Court of State N, Guardian E was required to use the services of Institution U as the Financial Advisory Group to maintain and manage the funds of Taxpayer A. One of Taxpayer A's assets was IRA X maintained at Institution W. Taxpayer A had been previously married, and his former wife had originally been listed as the beneficiary of IRA X. Guardian E contacted Institution W to request the necessary paperwork to arrange the transfer of IRA X from Institution W to Institution U. Individual C, an employee of Institution W, indicated that she would obtain the materials requested by Guardian E, including the original beneficiary document for IRA X and a copy of the divorce and other paperwork regarding a distribution to the former wife.

On Date 2, Individual C provided part of the requested paperwork and indicated that the remaining documents were at another location. Documentation provided shows that Individual C indicated that she would find and send the remaining documents. On Date 3, relying on Individual C to provide the remaining documents to Institution U, and in compliance with Commission G, Guardian E requested a distribution from IRA X by authorizing a trustee-to-trustee transfer of Amount D to Institution U. During the transaction, Guardian E specifically requested that Institution U open an IRA account for Taxpayer A. Guardian E did

not become aware that Individual C had not provided the documents timely or that Institution U had failed to establish an IRA for Taxpayer A, and instead had placed Amount D in Account Y, a money market non-IRA account, until Date 4 when it was brought to her attention by her accountant. The paperwork to complete the rollover of Amount D was not provided to Institution U until Date 5, which was after the 60-day period had expired. Amount D still remains in Account Y.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D 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) 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 received 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 the time during the 1-year period ending in 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 included 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 the documentation submitted by Taxpayer A, through Guardian E, is consistent with his assertion that his failure to accomplish a timely rollover of Amount D to an IRA within the 60-day rollover period was caused by mistakes made by Institution W and Institution U.

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 D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to 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 D 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 amounts that are required to be distributed by section 401(a)(9) of the Code.

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact *****, ID Number ***** at *****. Please forward all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Laura B. Washburn

Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose