

200430037



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Uniform Issue List: 408.03-00

APR 30 2004

Legend:

Taxpayer A        =  
Taxpayer B        =  
Company C         =  
Company D         =  
Amount E          =  
Amount F          =  
State G            =  
IRA X              =

IRA Y              =

Dear

This is in response to a ruling request submitted by you on \*\*\*\*\* in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A maintained an individual retirement account, IRA X, with Company C. On \*\*\*\*\* a distribution in Amount E was made from IRA X. Taxpayer B, spouse of Taxpayer A, maintained IRA Y with Company D. On \*\*\*\*\* a

distribution in Amount F was made from IRA Y. Taxpayer A's date of birth was \*\*\*\*\* and he was age \*\* at the time of these transactions. Taxpayer B's date of birth was \*\*\*\*\* she was age \*\* at the time of these transactions. At the time, Taxpayers A and B were in the process of moving to a new home several hours away in a different area of State G with a closing date of \*\*\*\*\* and a move-in date of \*. This was a time of family upheaval that included packing and unpacking as well as taking care of accompanying financial matters such as insurance policies, utility services and many other details concerning the move. Taxpayer A became confused concerning several dates including the scheduled closing date on the home, and he even forgot to pay certain insurance premiums due with respect to the new home for several months.

Taxpayer A indicates that he has for some time been experiencing short-term memory loss and he is becoming forgetful with respect to many things in his daily routine. He often becomes confused about current and upcoming dates and events although his memory of events that occurred long ago seems unaffected. Taxpayer B suffers from certain medical conditions including severe arthritis, osteoporosis relating to a spinal condition, and a chronic respiratory condition for which doctors cannot find a cure. Taxpayers A and B are planning to travel soon to a noted medical clinic in another state to seek further specialized diagnosis and treatment for Taxpayer B.

Taxpayer A was knowledgeable about the 60-day rollover requirement and he had secured funds to repay Amounts E and F to IRAs X and Y before the 60-day rollover period was to expire. However, Taxpayer A was confused by all of the events taking place during the time including a family gathering and visitation at his new home over the \*\*\*\*\* weekend and by the exact sequence of the dates involved in various transactions. Taxpayer A mistakenly thought that he had until \*\*\*\*\* to repay the funds taken from IRAs X and Y, rather than the correct date of \*\*\*\*\* for Amount E from IRA X, and \*\*\*\*\* for Amount F from IRA Y. During that time Taxpayer B called the attention of Taxpayer A to the completion of the IRA rollover transactions and Taxpayer A then had funds in Amounts E and F deposited to IRAs X and Y on \*\*\*\*\* a few days after the 60-day period actually elapsed with respect to the IRA distributions.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts E and F from IRAs X and Y because the failure to waive such requirement would be against equity or good conscience.

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 or any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money or any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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, 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 the taxpayers indicates that their serious ongoing medical problems (including short-term memory loss), and the confusion surrounding the family burdens they encountered during the time of the transaction

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all contributed to their inability to carry out the transactions as they intended although they had funds available to timely complete the rollovers.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount E and Amount F (less amounts described below). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contributions, Amounts E and F (less amounts described below) deposited into IRAs X and Y on \*\*\*\*\* will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of 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 transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact  
at

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted copy of letter