



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200504041

NOV 2 2004

U.I.L. 408.03-00

6E.T.EP:PA:T2

Legend:

Taxpayer A	= *****
Individual B	= *****
IRA X	= *****
Company C	= *****
Amount D	= *****
Amount E	= *****
Account H	= *****
Bank B	= *****
Amount F	= *****

Dear *****.

This is in response to your letter dated August 18, 2004, as supplemented by correspondence dated September 16, 2004, submitted on your behalf by your authorized representative, Individual B, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code”).

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A who is 79 years old maintained an individual retirement arrangement, IRA X, with Company C. Taxpayer A represents that in September 2003, because of numerous account problems she encountered with Company C, she withdrew Amount D from IRA X. (The account statements submitted for IRA X for September and October 2003 describe the withdrawal activity as "normal close out"). Documentation submitted on behalf of Taxpayer A indicates that on September 23, 2003, a portion of Amount D, Amount E, was deposited into Account H, a personal savings account Taxpayer A maintains with Bank B. Taxpayer A has attained her required beginning date under Code section 401(a)(9) and, prior to the September 2003 distribution from IRA X, had been receiving annual distributions from IRA X since attaining age 70 ½.

It has been represented that Taxpayer A's only source of income is from Social Security which she supplemented with monthly distributions from IRA X. Individual B asserts that it was her intention to have Taxpayer A continue taking monthly distributions from IRA X until those funds were exhausted instead of Taxpayer A receiving all of the IRA funds in one distribution. It has been represented that Company C did not offer any advice concerning the tax consequences of not rolling over the IRA X funds into another IRA within 60 days. It has been further represented that the 60 day rollover requirement was brought to Individual B's attention in March 2004 when Taxpayer A's [REDACTED] income tax returns were being prepared.

Individual B states that Taxpayer A has limited financial resources and that it was anticipated that, even in spite of the total distribution of Amount D in 2003, the IRA X funds would have been used to cover the cost of approximately two months of assisted care expenses. Documentation submitted with this request for a ruling substantiates that Taxpayer A has in fact used most of the IRA funds since they have been in Account H. An account statement for Account H as of September 7, 2004 indicates that Account H has an ending balance of less than Amount F.

Taxpayer A filed her income tax returns for the [REDACTED] tax year and included Amount D in gross income, the inclusion of which caused her income tax liability for tax year [REDACTED] to be much higher than in previous years. Even though Taxpayer A has, to date, used most of the IRA funds for personal expenditures since they have been in Account H, she would, nonetheless, like to file an amended return to get a refund of some of the taxes she paid for the [REDACTED] tax year. Taxpayer A proposes to redeposit, from other sources, a portion of Amount D back into an IRA and requests that the Service waive the 60 day rollover requirement with respect to the portion of Amount D so redeposited into an IRA.

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)(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 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)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 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.

In this case Taxpayer A received a distribution of Amount D from IRA X in tax year [REDACTED]. Documentation submitted with this request for a ruling indicates that on September 23, 2003, a portion of the IRA X distribution, Amount E, was deposited into Account H, a personal savings account Taxpayer A maintains with Bank B. Since September 2003 to the present date, Taxpayer A has used the most of the IRA funds which she deposited into Account H to meet personal financial expenditures. An account statement for Account H dated September 7, 2004, shows that Account H has a balance of less than Amount F. Further, it has been represented that Taxpayer A would have used all of Amount D to pay for assisted care.

In determining whether to grant a waiver of the 60-day rollover requirement, one of the factors that the Service considers is whether the taxpayer used the money since it has been out of the IRA. In this case it has been shown that Taxpayer A has in fact used most of Amount D for personal expenditures. The Committee Reports describing the legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible retirement plans, including IRAs. Using a distribution from an IRA to meet personal financial obligations is not consistent with the intent of Congress to allow portability between eligible retirement plans.

Under the circumstances presented in this case, since Taxpayer A has used most of the IRA X distribution, the failure to waive the 60-day rollover requirement would not be against equity or good conscience. Therefore, the request to waive the 60-day rollover period with respect to the distribution from IRA X is denied, and Taxpayer A will not be allowed to redeposit, from other sources, an amount back into IRA X.

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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

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If you have any questions concerning this ruling, please contact
*****SE:T:EP:RA:T2.

Sincerely yours,

~~(signed)~~ **JOYCE E. FLOYD**

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
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