



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200514027

JAN 10 2005

Uniform Issue List: 408.03-00

SE: T. EP: RA: T3

Legend:

Taxpayer A =

Amount D =

Insurance Company M =

Dear Ms.

In letters dated July 27, 2004, August 26, 2004, and November 18, 2004, your authorized representative requested 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 penalty of perjury in support of the ruling requested:

Taxpayer A is [REDACTED] years old. Taxpayer A received a check dated [REDACTED] for Amount D from her Individual Retirement Account (IRA) with Insurance Company M. Taxpayer A wished to invest this money in a more practical and profitable IRA account. On [REDACTED] Taxpayer A went to her local bank where she already had both savings and checking accounts. She was unaware of the 60-day IRA rollover requirement, but nonetheless, the deposit was significant enough to her that she waited to meet with a more senior bank representative in order to get assistance with depositing her larger than usual transaction. With no discussion of the nature of the funds, Taxpayer A deposited Amount D into her savings account.

Taxpayer A has several medical conditions which required numerous weekly treatments before and during the 60-day rollover period. Taxpayer was distracted from handling her personal finances because of pain and constant activities involving the treatment of her medical condition.

On [REDACTED] Taxpayer A returned to her local bank. At this time she was advised of the 60 day rollover requirement and told that she had exceeded it by 15 days. Taxpayer A then agreed to transfer Amount D (along with an additional \$ [REDACTED] distribution from a nonqualified annuity) to a non-IRA annuity. Taxpayer A subsequently enlisted the help of her brother who is more fluent in English to communicate by phone and letter with the Internal Revenue Service to resolve the matter. In addition, Taxpayer A sought the advice of an accountant.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and 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 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (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 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, (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.

The information presented by Taxpayer A demonstrates that the failure of Taxpayer A to establish a rollover contribution to another IRA within 60 days of receiving Amount D is due to Taxpayer A's medical condition which resulted in chronic pain and necessitated numerous treatments by doctors during the 60-day period. Taxpayer A is not conversant regarding IRA rollover rules and relied on the knowledge of bank personnel. In addition, her difficulty with the English language led to a failure of communication between her and the senior bank officer in February as to the nature of the funds and the purpose of the deposit. The combination of her medical condition, her age, her difficulty with language, and confusion from the lack of communication or information by bank officials regarding the 60 day rollover rules caused her failure to make a timely contribution to a rollover IRA.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D, except as noted below, to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of any amounts required to be distributed.

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 [REDACTED]
[REDACTED] at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose