



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAY 04 2005

200530033

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer =

Custodian A =

Bank B =

IRA C =

Account D =

Amount E =

Amount F =

Dear [REDACTED]

This letter is in response to a request for a letter ruling dated February 23, 2005, as supplemented by additional information dated April 8, 2005, 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").

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

The Taxpayer maintained IRA C, an Individual Retirement Account ("IRA") under Code section 408(a), with Custodian A. The Taxpayer and his spouse are both 85 years of age and they relied on a financial consultant with Custodian A for financial advice. During 2004, the Taxpayer received required minimum distributions from IRA C totaling Amount E. On October 22, 2004, the Taxpayer withdrew Amount F from IRA C. On November 2, 2004, dissatisfied with the services provided by Custodian A, the Taxpayer withdrew all of the funds from his accounts with Custodian A. On November 8, 2004, the Taxpayer deposited the funds received from Custodian A, including Amount F from IRA C, into Account D, a non-IRA account with Bank B. The funds, including Amount F, continue to remain in Account D and have not been used by the Taxpayer.

During 2004, the Taxpayer experienced serious health problems including cancer which required several operations. Upon the withdrawal of the funds from IRA C, the Taxpayer did not realize the funds were in an IRA and was not aware of the 60-day rollover requirement nor was he informed by his financial consultant that part of the funds deposited on November 8, 2004, were IRA funds that had to be rolled over to another IRA account within 60 days. The mistake was discovered in January 2005, during a meeting with a financial consultant with Bank B.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount G because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) provides that section 408(d)(1) 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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).

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 Code 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 Taxpayer demonstrates that his failure to rollover Amount F was due to his reliance on the advice of a financial consultant with Custodian A who did not inform the Taxpayer of the 60-day rollover requirement. Because of the Taxpayer's age and medical condition he did not realize he was withdrawing funds from an IRA and was not aware of the 60-day rollover requirement but had relied on the financial consultant to provide necessary information. The mistake was not discovered until after the expiration of the 60-day rollover period. Amount F has remained at all times in Account D.

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 F from IRA C with Custodian A. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

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], SE:T:EP:RA:T1, I.D.
[REDACTED] at [REDACTED]

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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