



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAY 10 2005

200531030

Uniform Issue List: 408.03-00

SE: T: EP: RA: T: 1

Legend:

Taxpayer	=
Custodian A	=
Company B	=
IRA C	=
Account D	=
Account E	=
Amount G	=
Amount H	=
Individual I	=

Dear :

This letter is in response to a request for a letter ruling dated December 22, 2004, as supplemented by additional correspondence dated February 22, 2005, from your

authorized representative, 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 is a widow. The Taxpayer maintained IRA C, an Individual Retirement Account ("IRA") under Code section 408(a), with Custodian A. The Taxpayer relied upon Individual I, her son-in-law and an employee of Company B, for investment advice. On [REDACTED] and [REDACTED], Individual I, without the knowledge or consent of the Taxpayer, diverted Amount G and Amount H, respectively, from IRA C to Account D for his personal use. When the Taxpayer ceased receiving monthly statements from Custodian A for IRA C, she questioned Individual I but received explanations which satisfied her. On [REDACTED], Individual I placed Amounts G and H in Account E, a trust set up by Taxpayer's deceased husband with Custodian A. Individual I died on [REDACTED].

The misappropriation and diversion of funds from Taxpayer's IRA C was discovered after the death of Individual I when inquiries were made about the status of the Taxpayer's [REDACTED] tax returns. The accountant hired by Individual I to prepare the Taxpayer's [REDACTED] returns forwarded a Form 1099-R showing the distributions from IRA C.

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 Amounts G and H 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 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 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 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)).

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 indicates that the Taxpayer relied on Individual I for help in maintaining her financial affairs. Without the Taxpayer's knowledge or consent, Individual I misappropriated and diverted funds from IRA C for his personal use. Discovery of the misappropriation occurred after the expiration of the 60-day rollover period.

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 Amounts G and H 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).

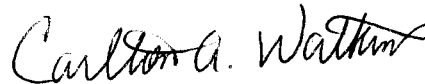
This ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

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.

A copy of this letter ruling has been sent to your authorized representatives pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact [REDACTED], SE:T:EP:RA:T1, I.D. [REDACTED], at [REDACTED].

Sincerely yours,



Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: