



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

200602050

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

10/20/05

SE: T: EP: RA: T1

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

Account D =

Amount E =

Company F =

Bank G =

Individual H =

Dear :

This letter is in response to a request for a letter ruling dated July 5, 2005, as supplemented by additional information dated August 15, 2005, from your authorized representative, in which you request 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:

Taxpayer A, age 74, represents that she received a distribution from IRA C totaling Amount E. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to a miscommunication between herself and her son, Individual H, which led to Amount E being placed in a non-IRA account. Taxpayer A also suffered from a medical condition and treatments which impaired her ability to accomplish a timely rollover. Taxpayer A further represents that Amount E has not been used for any other purpose.

Taxpayer A was married to Taxpayer B until his sudden death on December 1, [REDACTED]. Taxpayer B handled the family financial and tax matters. Taxpayer B maintained IRA C, an individual retirement annuity under Code section 408(b), with Company F. Taxpayer A was the beneficiary of Taxpayer B's IRA. In December [REDACTED] seeking a higher rate of return, Taxpayer A decided to withdraw the funds from IRA B and roll them over to a non-annuity IRA. Taxpayer A received a check dated December 22, [REDACTED] from Company F, totaling Amount E. Due to a back injury suffered in November, [REDACTED] and an operation in December [REDACTED] Taxpayer A was incapable of caring for herself and directed her son, Individual H, to deposit the check in Bank G. Individual H was not familiar with the finances of Taxpayer A and that the check represented an IRA distribution and deposited Amount E in a non-IRA account on December 28, [REDACTED]. Taxpayer A did not discover the mistake until after the expiration of the 60-day period when she started to have her income tax return prepared in [REDACTED].

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of Amount E.

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 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)).

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(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.

Rev. Proc. 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 and the documentation, including a statement from her treating physician, submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by her ongoing medical condition and a miscommunication with her son concerning her intention to rollover Amount E to another IRA.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount E from IRA C with Company F. The Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E into a Rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount E will be considered a rollover contribution 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 representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact \_\_\_\_\_, SE:T:EP:RA:T1, I.D. \_\_\_\_\_ at \_\_\_\_\_

Sincerely yours,

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: