



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200611041

DEC 19 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. T1

Legend:

Taxpayer A.....

Financial Institution M.....

Financial Institution N.....

Amount 1.....

Amount 2.....

Amount 3.....

Amount 4.....

IRA X.....

IRA Z.....

Dear :

This is in response to a letter dated May 26, 2005, as supplemented by correspondence dated June 2, 2005, October 18, 2005, December 3, 2005, and December 5, 2005 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"). You submitted the following facts and representations under penalties of perjury in support of your request.

On March 4, 2005, Taxpayer A, age 64, took a distribution in Amount 3 from IRA Z maintained by Financial Institution N. On this date, pursuant to Taxpayer A's request, Financial Institution N transferred Amount 3 into Taxpayer A's non-IRA account with Financial Institution N. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to conversations within the 60-day period with personnel at the local Internal Revenue Service Center (the "Service Center") who raised concerns regarding whether Amount 3, in its entirety, was eligible for rollover. Taxpayer A represents that Amount 3 has not been used for any other purpose.

The above concerns were based on prior rollovers by Taxpayer A. On February 13, 2004, as per Taxpayer A's request, Financial Institution M closed Taxpayer A's IRA X and transferred the proceeds, equal to Amount 1, into a non-IRA account with Financial Institution M. On March 2, 2004, Taxpayer A rolled over Amount 2 to IRA Z, an amount in excess of Amount 1, which represented Taxpayer A's estimate of the value of IRA X plus the value of his two other IRAs maintained by Financial Institution M. Financial Institution N characterized the difference between Amount 1 and Amount 2 as IRA contributions for years 2003 and 2004.

On March 2, 2005, when IRA Z matured, Taxpayer A caused the funds in IRA Z, Amount 3, to be transferred to a non-IRA account with Financial Institution N. Taxpayer A intended that Amount 3 be held in the non-IRA account temporarily until he determined where to roll over Amount 3. On or about April 22, 2005, Taxpayer A noticed discrepancies in the documents concerning IRA Z and his federal Income Tax Return filed for [REDACTED]. Consequently, on or about April 25, 2005, Taxpayer A visited the Service Center for clarification. Still confused, Taxpayer A then consulted with Financial Institution M, in person, to discuss these discrepancies and the Form 1099-R Financial Institution M had issued for [REDACTED]. Taxpayer A had further discussions with the Service Center, with the last held on or about May 12, 2005, after the expiration of the 60-day period. Unable to resolve this issue, Taxpayer A applied for a waiver by letter dated May 26, 2005. To date, Amount 3 remains intact in Taxpayer A's non-IRA account with Financial Institution N.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to the distribution of Amount 3.

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.

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) 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.

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) 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.

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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 (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) of the Code, 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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the inability to obtain clarification on whether Amount 3 was eligible to be rolled over in its entirety.

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 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into an IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3). However, this waiver does not extend to Amount 4, the difference between Amount 1 and Amount 2. Because of the uncertainty as to the proper characterization of Amount 4, we express no opinion whether Amount 4 is otherwise eligible for rollover, and thus eligible for a waiver.

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 that 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

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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