



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

APR 17 2006

200628036

Uniform Issue List: 408.03-00

Legend:

T:EP:RA:T2

Taxpayer A =

Financial  
Institution B =

IRA X =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This is in response to your request dated October 5, 2005, as supplemented by correspondence dated February 27 and March 21, 2006, 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").

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

Taxpayer A, age 70, represents that he received a distribution from IRA X totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a misunderstanding regarding online transactions with Financial Institution B which led to Amount 1 being placed in non-IRA accounts. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

On July 12, 2005, Taxpayer A transferred Amount 1 from his 401(k) plan to a money market fund in IRA X with Financial Institution B. Taxpayer A intended that, after the transfer, he would reinvest the assets in bond funds within IRA X. On July 13, 2005, Taxpayer A mistakenly transferred Amount 1 to two different non-IRA bond funds, in Amount 2 and Amount 3, in an online transaction. Documentation submitted indicates the confusing nature of Financial Institution B's online transfer screens. Taxpayer A represents that he was out of the country from September 7 through October 2, 2005. On October 4, 2005, while investigating an unrelated direct rollover with Financial Institution B, Taxpayer A discovered that the account number for IRA X had changed. Financial Institution A informed him that his online transfer of July 13, 2005, had transferred the assets to non-IRA accounts. On October 17, 2005, in anticipation of a favorable ruling, Financial Institution B transferred Amount 4 and Amount 5 from the non-IRA accounts to IRA X.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 contained in section 408(d)(3) of the Code in this instance.

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 documentation submitted by Taxpayer A is consistent with his assertion that he intended to change investments within IRA X and, due to the confusing nature of Financial Institution B's transfer screens, mistakenly transferred Amount 1 out of IRA X and into non-IRA accounts.

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. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 4 and Amount 5 will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

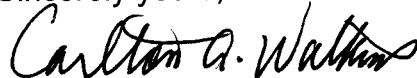
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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 . Please address all correspondence to SE:T:EP:RA:T:1.

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose