



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

*Uniform Issue List: 408.03-00*

JUN 13 2006

T:EP:RA:T3

Legend:

Taxpayer A:

IRA X:

Amount A:

Company A:

Dear :

This is in response to your request dated \_\_\_\_\_ as supplemented by  
correspondence dated \_\_\_\_\_, and \_\_\_\_\_ 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, who was born on \_\_\_\_\_ represents that he received a  
distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to  
accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was  
due to Taxpayer A's medical condition and treatments which impaired his ability to  
accomplish a timely rollover. Further Taxpayer A represents that Amount A has not  
been used for any other purpose.

Taxpayer A opened IRA X with Company A in March of 1997 with funds  
transferred from another Simplified Employee Pension ("SEP") account. In November,  
2002, Taxpayer A filed a claim with the NASD against Company A for mismanagement  
of his account. In August of 2004, the litigation was concluded. Company A closed IRA  
X on or about October 10, 2004, and on or about October 11, 2004, it mailed a check for  
the balance of the IRA X account to Taxpayer A in \_\_\_\_\_ Taxpayer A was hospitalized  
on October 8, 2004 and underwent heart surgery in \_\_\_\_\_ on October 13, 2004.  
Taxpayer A was in the hospital until October 21, 2004, after which he was transferred to  
a paramedical facility for recuperation and therapy which lasted from October 21, 2004  
until December 24, 2004. Upon release from the facility, he returned to his home in

It has been represented that Taxpayer A did not receive the check from Company A until his return to in December. Additionally, it has been represented that Taxpayer A was not informed that the forced closing of the account constituted a taxable distribution until he received a Substitute Form 1099 from Company A in February, 2005.

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

With respect to your ruling request, 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)(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.

Revenue Procedure 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 his failure to accomplish a timely rollover was caused by his medical condition which required an extended stay in a hospital and in a paramedical facility

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 A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of an amount not to exceed Amount A into an IRA described in Code section 408(a) will be considered a rollover contribution within the meaning of section 408(d)(3) 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 \_\_\_\_\_ at  
Please address all correspondence to SE:T:EP:RA:T .

Sincerely yours,

  
Manager,  
Employee Plans

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose