



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

AUG - 7 2006

200644030

Uniform Issue List: 408.03-00

SE:TEP:RA:T3

Legend:

Taxpayer A

Taxpayer B

IRA X

IRA Y

IRA Z

Amount A

Amount B

Amount C

Date A

Date B

Date C

Date D

Dear :

This is in response to your request dated , as amended by correspondence dated , 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 and Taxpayer B were married and filed a joint return. Taxpayer A received a distribution from IRA X, totaling Amount A, on Date A. Taxpayer A rolled over Amount B to IRA Y on Date B. Taxpayer B passed away on Date C which was within the 60-day rollover period applicable to the distribution of Amount A. Taxpayer A rolled Amount C into IRA Z on Date D which was one day beyond the end of the 60-day rollover period. Taxpayer A's failure to roll over Amount C within the 60-day period prescribed by section 408(d)(3) was due to his being distraught over the death of his wife. Taxpayer A never used amount C which remains in IRA Z.

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 Amount C.

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.

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.

In this case, the Service notes that Taxpayer A accomplished a contribution of Amount C into an IRA one day after the expiration of the applicable 60-day rollover period. The Service also notes that Taxpayer A's failure to accomplish a timely rollover of Amount C by said one-day period was caused by Taxpayer A's being distraught over the recent death of Taxpayer B which led to his inadvertently not accomplishing a timely rollover. Taxpayer A never used Amount C

Therefore, since the failure to accomplish a timely rollover was of very short duration, 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 C from IRA X and the subsequent rollover into IRA Z. Taxpayer A's contribution of Amount C into IRA Z is deemed to have constituted a valid rollover within the meaning of Code section 408(d)(3) provided all other requirements of said section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6), if any.

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.

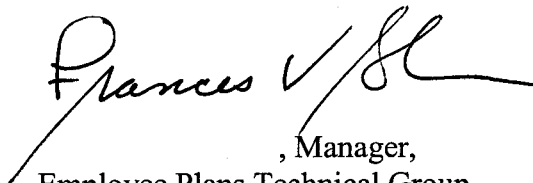
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This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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 (ID# )  
at ( ) - . Please address all correspondence to .

Sincerely yours,

  
Frances V. Sch, Manager,  
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose