



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
MAR 02 2007

T:EP:RA-T4

Legend:

Taxpayer A =

IRA X =

Amount A = \$

Date 1 =

IRA Y =

IRA Z =

Amount B = \$

Date 2 =

Dear :

This is in response to your request dated July 8, 2006, as supplemented by a letter dated November 21, 2006, and a Fax received January 31, 2007, 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").

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

Taxpayer A, age 60, represents that he received distributions of Amount A from IRA X on Date 1 and Amount B from IRAs Y and Z on Date 2.

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 advice of a friend who told him that at age 59 1/2 he could take tax-free distributions from his IRAs. Amounts A and B were put in Taxpayer A's checking account and used to pay Taxpayer A's debts during the 60-day rollover period.

Based on the above 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 A and Amount B.

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 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) of the Code where 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, 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.

Based on the facts in this case, Taxpayer A's assertion that he was unable to make a timely rollover due to advice of a friend who told him that at age 59 ½ he could take tax-free distributions from his IRAs is not grounds for granting a waiver of the 60-day rollover period. Further, none of the factors outlined in Revenue Procedure 2003-16 have been met in this case. Thus, the Service will not grant a waiver of the 60-day rollover period contained in section 408(d)(3) of the Code with respect to Amount A and Amount B.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of the Code or Income Tax Regulations which may be applicable thereto.

This ruling 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 by others as precedent.

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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney filed with this office.

If you have any questions please contact _____, I.D. # _____ at () _____

Sincerely yours,

for *Ada Perry*
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437