



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.03-00

MAY 27 2008

Legend:

Taxpayer P =
Institution X =
Institution Y =
IRA M =
Account N =
Amount A =
Amount B =
Date 1 =
Date 2 =

Dear :

This is in response to your request dated December 18, 2007, as supplemented by correspondence dated April 8, 2008, in which your authorized representative, on your behalf, requests 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 P, age 57, represents through her authorized representative, that she received a distribution of Amount A from her IRA account, IRA M, on Date 1. Taxpayer P asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the effects of her physical and mental conditions, which impaired her ability to make sound financial decisions.

Medical documentation submitted indicates that during and after the 60-day period beginning on Date 1, Taxpayer P was experiencing physical and mental problems that impaired her ability to make decisions and to cope with daily life. Taxpayer P represents that, as a result of her physical and mental problems during this period, she became confused and believed that the rollover period for her IRA was 90

days instead of 60 days. Taxpayer P further represents that on Date 2, 89 days after Date 1, she went to Institution Y, intending to deposit the check from Institution X into a rollover IRA. Institution Y informed Taxpayer P that the 60-day rollover period had expired but nevertheless accepted the deposit. Subsequently, after being advised by her CPA that the deposit would be treated as an excess IRA contribution, Taxpayer P transferred Amount A plus earnings equal to Amount B from the rollover IRA to Account N, a new, segregated non-IRA account. Taxpayer P also represents that during the one-year period ending on Date 2 she did not receive any other amount from an IRA that was not includible in gross income because of the application of section 408(d)(3) of the Code.

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.

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)(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 P is consistent with her assertion that her failure to roll over the distribution within the 60-day rollover period prescribed by section 408(d)(3) of the Code was a result of the effects of her physical and mental condition, which impaired her ability to make sound financial decisions. Further, Taxpayer P's action in attempting to roll over Amount A on Date 2 was consistent with her belief that the rollover period was 90 days.

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 M. Taxpayer P 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, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling is based on the assumption that IRA M met the requirements of Code section 408(a) at all relevant times.

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.

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Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact
(ID #) at () - . Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,


Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose