



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200847022

AUG 29 2008

UI No. 408.03-00

SE:T:EP:RA:T4

LEGEND:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX
Bank B = XXXXXXXXXXXXXXXXXXXXXXXX
Provider A = XXXXXXXXXXXXXXXXXXXXXXXX
Financial Representative N = XXXXXXXXXXXXXXXXXXXXXXXX
Amount A = XXXXXXXXXXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXX

This is in response to your letter dated March 17, 2008, and supplemented by letters dated April 15, 2008, April 23, 2008, and May 27, 2008, 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 52, represents that he received a distribution of Amount A from IRA X. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the failure of Financial Representative N and Provider A to advise him of the 60-day rollover requirement.

During Date 1, Taxpayer A visited with Financial Representative N, a representative of Provider A, to discuss his concern with the poor return on his money market investments in IRA X. Taxpayer A informed Financial Representative N that he could make a substantially higher return on his investments at Bank B. Financial Representative N, advised Taxpayer A that he would be "better off" to move his investments to the higher rate fund. Based on that advice, on Date 2, Taxpayer A withdrew Amount A from IRA X and deposited Amount A plus Amount B into a certificate of deposit (CD) with Bank B, a non-IRA account. Taxpayer A states that he intended to rollover Amount A from IRA X into another

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IRA at Bank B to obtain a higher rate. There was no documentation showing that Taxpayer A, in fact, established an IRA with Bank B.

Taxpayer A states that the distribution to a non-IRA account was an error. He did not intend to use the distribution as income, but instead intended to simply roll it into an investment with a higher rate of return. Taxpayer A asserts further that he relied on oral information provided by Financial Representative N who erred in not informing him that the distribution was taxable unless rolled over into another IRA within 60 days.

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 A from IRA X.

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 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.

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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) of the Code, 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, Taxpayer A has not demonstrated that his inability to complete a timely rollover of Amount A was caused by any of the factors cited in Revenue Procedure 2003-16. Taxpayer A asserts that Provider A's failure to advise him that the distribution would be taxable or that he had rollover options, rises to the level of financial institution error. However, the Code imposes no such obligation on IRA custodians. Absent actions on the part of a financial institution or financial advisor undertaking such an obligation, (e.g. where a taxpayer has erroneously been advised that the rollover period is 90 days), we will not recognize this failure as financial institution error.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X.

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 xxxxxxxxxxxxxxxxx, I.D. xxxxx at xxxxxxxxxxxxxxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

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

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose