

200920056



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 18 2009

Uniform Issue List: 408.03-00

SET:EP:RA:TI

Legend:

Taxpayer = *****

IRA A = *****

IRA B = *****

Account A = *****

Amount 1 = *****

Amount 2 = *****

Amount 3 = *****

Amount 4 = *****

Amount 5 = *****

Amount 6 = *****

Financial Institution A = *****

Financial Institution B = *****

Financial Institution C = *****

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, age **, represents that on *****, she received a distribution from her individual retirement account ("IRA A") totaling Amount 1, from Financial Institution A. Taxpayer also received a distribution from IRA B of Amount 2 on *****, from Financial Institution B. Taxpayer asserts that her purpose in taking the distributions was to combine the two IRAs into one annuity that she was in the process of establishing. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer's husband, whose medical condition and treatments impaired her ability to accomplish a timely rollover. Taxpayer further represents that neither Amount 1 nor Amount 2 has been used for any purpose.

Taxpayer represents that she received a distribution from IRA A of Amount 1 and a distribution from IRA B of Amount 2 in order to roll the funds into an annuity that she was in the process of establishing. Upon receiving the two distributions, Taxpayer deposited the funds into Account A with Financial Institution C, with the intention of waiting for an annuity to be established. Following the two distributions, Taxpayer's husband became ill, requiring doctor's treatments and hospitalizations during the 60-day period. Taxpayer was forced to address her husband's medical issues, causing her to miss appointments with her accountant designed to establish the annuity into which the distributed funds would be placed. No amounts were withheld to pay taxes on any part of the distribution of Amount 1 or Amount 2.

Prior to the distributions from IRA A and IRA B, Taxpayer took a required minimum distribution of Amount 4, of which Amount 5 and Amount 6 were withheld for federal and state taxes, respectively.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to Amount 3 (representing Amount 1 plus Amount 2) contained in section 408(d)(3) of the Code in this instance.

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.

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 is consistent with her assertion that her failure to accomplish a timely rollover was caused by the medical condition and treatments of Taxpayer's husband.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 from IRA A and Amount 2 from IRA B, for a total of Amount 3. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 into an eligible retirement plan. 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 3 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

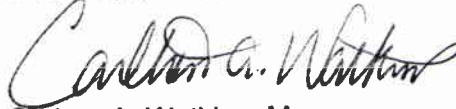
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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 ***** (Identification Number *****) at (**) ***-****. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Carlton A. Watkins".

Carlton A. Watkins, Manager
Employee Plans Technical Group 1