

200920060



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

SE: T. EP: RA: TI

Legend:

Taxpayer A

IRA A

Financial Institution A

Account B

Amount A

Amount B

Amount C

Dear

This letter is in response to a request for a letter ruling dated April 16, 2007, as modified and supplemented by correspondence dated November 7, 2007, January 31, 2008, and March 5, 2008, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount B from your individual retirement account (IRA A) maintained with Financial Institution A.

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

Taxpayer A was over 70 1/2 years of age in 2006. It is asserted that the failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to Taxpayer A's mental and physical conditions which impaired his ability to manage his financial affairs.

On July 24, 2006, Taxpayer A received Amount A as a distribution from IRA A. This distribution included Amount C (Taxpayer A's required minimum distribution). On July 27, 2006, Taxpayer A deposited Amount A into Account B, a non-IRA account.

On October 25, 2006, Taxpayer A received a distribution of Amount B from IRA A which liquidated IRA A. Taxpayer A withdrew Amount B for medical expenses and deposited the funds into Account B on October 26, 2006. When Taxpayer A received the distribution of Amount B, he had just been discharged from the hospital where medication had been administered to him for pain relief. Taxpayer A's physician stated that this medication may alter memory and cognition. Although Taxpayer A intended to use the distributed funds for medical expenses, his medical condition caused him to forget that he had medical insurance coverage through his spouse's employment. Taxpayer A's withdrawal of funds to pay medical expenses was not therefore a rational action. Taxpayer A did not remember that he withdrew Amount B from IRA A until he received the Form 1099-R for the year 20 . . . Amount B remains unused in Account B.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount B from IRA 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 the documentation submitted by Taxpayer A is consistent with the assertion that the failure to accomplish a timely rollover of Amount B was caused by Taxpayer A's mental and physical conditions which impaired his ability to manage his financial affairs.

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 B from IRA A. Taxpayer A is granted a period of 60 days from the date of this ruling letter to contribute Amount B, minus the 2007 and 2008 minimum required distributions, into an eligible retirement plan such as an 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 B (minus the 2007 and 2008 minimum required distributions) will be considered a rollover contribution within the meaning of section 408(d)(3) 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 that may be applicable thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed pursuant to sections 408(a)(6) and 401(a)(9) of the Code.

This letter only applies to the taxpayer named above. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____ at _____

Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: