



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

200936044

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 11 2009

**Uniform Issue List: 408.03-00**

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SET, EP, RA, TI

**Legend:**

Taxpayer A = \*\*\*\*\*

IRA A = \*\*\*\*\*

Account 1 = \*\*\*\*\*

Amount 1 = \$\*\*\*\*\*

Financial Institution A = \*\*\*\*\*

Financial Institution B = \*\*\*\*\*

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 A, age \*\*, represents that he received a distribution from individual retirement account ("IRA") A totaling Amount 1 from Financial Institution A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's mental condition which impaired his ability to accomplish a timely rollover.

Taxpayer A represents that on \*\*\*\*\*, he received a distribution from IRA A of Amount 1 in order to roll those funds over into another individual retirement account to earn a higher rate of return. On the same day he received the distribution of Amount 1, Taxpayer A unknowingly deposited the funds into Account 1, a taxable account, with

Financial Institution B. No amounts were withheld to pay taxes on any part of the distribution of Amount 1, and the funds were used to purchase a higher-yielding certificate of deposit held in Account 1. The funds have remained unused in Account 1 since their distribution from IRA A. Taxpayer A was unaware that Account 1 with Financial Institution B was not an IRA account until he met with his accountant after the end of the 20<sup>th</sup> calendar year to go over the tax information that had been gathered for his accountant to prepare the 20<sup>th</sup> tax returns.

Because of Taxpayer A's mental condition, he was unable to understand the consequences of his actions and to effectuate a proper rollover of his distribution of Amount 1 from IRA A. In a letter dated \*\*\*\*\*, Taxpayer A's physician provided a statement that, in his professional opinion, Taxpayer A is not and was not at the time of the distribution competent to manage his personal financial affairs.

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 1 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 60<sup>th</sup> 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 60<sup>th</sup> 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 A is consistent with his assertion that his failure to accomplish a timely rollover was caused by Taxpayer A's mental condition.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 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 1 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 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,

*Carlton A. Watkins*

Carlton A. Watkins, Manager,  
Employee Plans Technical Group 1