



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 11 2009

**Uniform Issue List: 408.03-00**

SETTLEMENT

**Legend:**

Taxpayer A	=
Financial Institution B	=
Financial Institution C	
Date D	=
Date E	=
Account F	=
Account G	=
IRA X	=
Amount 1	=

Dear

This is in response to a letter dated April 3, 2009, 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 (the "Code").

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

Taxpayer A, age 86, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d) due to her medical condition which impaired her ability to make financial decisions.

Taxpayer A represents that she was the owner of IRA X, a qualified individual retirement arrangement ("IRA") established and maintained at Financial Institution B under the rules of section 408 of the Code. On Date D, Taxpayer A represents that she received a distribution totaling Amount 1 from IRA X and used the proceeds (Amount 1) to purchase two separate non-IRA CDs at Financial Institution C on Date E. Taxpayer A, whose deceased husband handled the financial aspects of the household, was unaware that Amount 1 was invested in a tax-deferred account and that such distribution, if not deposited within 60 days into another IRA, would be taxable at her

current income tax rate. Taxpayer A represents that Amount 1 is now in Accounts F and G at Financial Institution C and has not been used for any purpose.

Taxpayer A's granddaughter (who is also her authorized representative) has represented that Taxpayer A's family members have, over the past five years, witnessed the deterioration of Taxpayer A's mental capacity and her ability to make sound financial decisions. The ruling request is accompanied by a statement from Taxpayer A's doctor, which provides, in part, that Taxpayer A ". . . has worsening dementia and depression which may affect her judgment and insight. This may result in poor decisions."

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

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)(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 her assertion that her failure to accomplish a timely rollover of Amount 1 was due to medical conditions which impaired her ability to manage her 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 1 from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount 1 to an IRA (or IRAs) described in section 408(a) of the Code. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such IRA contribution, the contribution 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 ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the code.

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.

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

200936048

-4-

If you wish to inquire about this ruling, please contact \*\* \*\*\*\*\* \*\*\*\*\*  
(Government Identification Number \*\*-\*\*\*\*\*) by phone at (\*\*\*) \*\*\*-\*\*\*\* or by fax at  
(\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to \*\*\*\*\*.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose

cc: