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

AUG 05 2009

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**Uniform Issue List: 408.03-00**

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\*\*\*\*\*  
\*\*\*\*\*

SE:T:EP:RA:TI

**Legend:**

Taxpayer A = \*\*\*\*\*  
IRA A = \*\*\*\*\*  
Account 1 = \*\*\*\*\*  
Amount 1 = \$ \*\*\*\*\*  
Amount 2 = \$ \*\*\*\*\*  
Amount 3 = \$ \*\*\*\*\*  
Date 1 = \*\*\*\*\*  
Date 2 = \*\*\*\*\*  
Date 3 = \*\*\*\*\*  
Date 4 = \*\*\*\*\*  
Financial Institution A = \*\*\*\*\*

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, who had attained age 59 ½, represents that \*\* received on Date 1 a distribution totaling Amount 1 from individual retirement account ("IRA") A maintained with Financial Institution A. Taxpayer A asserts that \*\*\* failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's

medical condition and treatments, and those of a family member, which impaired \*\*\* ability to accomplish a timely rollover.

Taxpayer A represents that \*\* received a distribution from IRA A of Amount 1 in order to roll those funds over into another individual retirement account. Upon receiving the distribution, Taxpayer A deposited the funds into Account 1, a nonqualified account. Thereafter, Taxpayer A faced a number of health issues, beginning with those of a family member. Taxpayer A faced additional health issues of \*\*\* own and was hospitalized within the 60-day rollover period on Date 2 and discharged on Date 3. Of the distribution of Amount 1 from IRA A, Taxpayer A used Amount 3 to cover personal expenses. Taxpayer A left Amount 2 of the distribution unused. No amounts were withheld to pay taxes on any part of the distribution of Amount 1. On Date 4, four days after the expiration of the 60-day rollover period, Taxpayer A was told by Financial Institution A that \*\* could not complete a rollover because \*\* had missed the 60-day rollover deadline by three days and that \*\* would need to obtain a ruling from the Service waiving the 60-day requirement in this instance.

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 2 of the distribution of Amount 1 contained in section 408(d)(3) of the Code.

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 \*\*\* assertion that \*\*\* failure to accomplish a timely rollover was caused by Taxpayer A's medical condition and treatments and a family member's medical condition and treatments.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 2 of the distribution of Amount 1 from IRA A. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 2 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 2 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 \*\*\*\*\*.

Sincerely yours,

*Carlton A. Watkins*

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

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose