

200952062



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 30 2009

Uniform Issue List: 408.03-00

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T: EP: RA: UK

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Account Y = XXXXXXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXXXXXX
Bank Z = XXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX

This is in response to your letter dated March 13, 2007, and supplemented by letters dated September 11, 2007, August 19, 2008, and August 21, 2009, as submitted by 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").

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

Taxpayer A, age 75, represents that he received a distribution from IRA X totaling Amount C. Taxpayer A asserts that his failure to accomplish a rollover within the

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60-day period prescribed by section 408(d)(3) of the Code was due to his physical and mental conditions which affected his ability to handle his financial affairs.

On Date 1, Taxpayer A received a distribution of Amount C from IRA X. Taxpayer A represents that during the period preceding the distribution and through the end of the 60-day rollover period he was suffering from a variety of medical issues including gall bladder disease and cancer, as a result of which he underwent multiple medical treatments including various tests, an operation, radiation treatment and chemotherapy. He was also hospitalized during part of that time. Taxpayer A represents that in addition to his physical conditions, which affected his mental capacity, he was also suffering from increasing memory loss and was diagnosed with Alzheimer's shortly after the end of the 60-day rollover period. Taxpayer A has provided documentation showing that he was treated for these physical and mental health conditions during the period.

Taxpayer A represents that as a result of his mental impairment, on Date 2, he deposited Amount C into Account Y, a non-IRA account, at Bank Z instead of into a rollover IRA. Amount C has remained in Account Y and has not been used for any other purpose. Taxpayer A did not become aware that a timely rollover had not been made of Amount C until Date 3, while consulting with his tax accountant. Taxpayer A asserts that his physical and mental health conditions impaired his ability to handle his financial affairs and to complete the rollover transaction within the 60-day rollover period prescribed by section 408(d)(3) of the Code.

Based on the facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount C.

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 account is maintained if:

- 1) 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 he receives the payment or distribution; or
- 2) the entire amount received (including money and 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 one-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.

Revenue Procedure 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) of the Code, 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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his physical and mental health conditions which affected his ability to handle his financial affairs and complete the rollover within the required 60-day rollover period.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to redeposit Amount C 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 C will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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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 ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX, SE:T:EP:RA:T4, I.D. No. XXXXXXXXXXXX, at XXXXXXXXXXXXXXXXXXXX.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose