

201003031



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
OCT 26 2009

Uniform Issue List: 408.03-00

SE: T: EP: RA: TJ

Legend:

Taxpayer A =

IRA Account B =

IRA Account C =

Financial Institution D =

Date E =

Year F =

Financial Institution G =

Financial Institution H =

Financial Institution I =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This letter is in response to a request for a letter ruling dated December 22, 2008, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code") regarding the distribution of Amounts 1 and 2 (totaling Amount 3) from your individual retirement accounts (IRA Accounts B and C, respectively) maintained with Financial Institution D.

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

Taxpayer A, age 84 at the time of the distribution of Amounts 1 and 2 from IRA Accounts B and C, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her deteriorating mental condition which impaired her ability to make financial decisions and prevented her from understanding the nature of her actions. Taxpayer A further represents that Amount 4 is now in an account with Financial Institution I and has not been used for any purpose.

Taxpayer A held two Individual Retirement Accounts (IRA Accounts B and C) at Financial Institution D. Taxpayer A withdrew the funds (totaling Amount 3) from both IRAs to establish two certificates of deposit at Financial Institution G on Date E. One was a certificate of deposit for Amount 4; the other was a flexible CD certificate for Amount 5. Neither of the two new accounts was an IRA. Taxpayer A asserts that she was not aware that the funds held at Financial Institution D were in retirement accounts, was not aware of the 60-day rollover requirement and was not advised of the 60-day rollover requirement by anyone at Financial Institution D.

Upon the maturity of the CDs at Financial Institution G, Taxpayer A opened a new CD at Financial Institution H using Amount 4 from the larger CD. Taxpayer A deposited the interest accrued on Amount 4 plus the interest and principal from Amount 5 into her checking account for her own personal use. Taxpayer A subsequently closed the Financial Institution H account in Year F and deposited Amount 4 (plus interest accrued) into an account at Financial Institution I, where it currently remains.

Documentation submitted with Taxpayer A's request reflects that Taxpayer A has been treated for medical conditions which have left Taxpayer A with cognitive problems. She has been experiencing memory loss for years and has sustained several serious accidents requiring medical attention.

Based on the above facts and representations, Taxpayer A has requested 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 entire distribution (Amount 3) she received on Date E.

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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount 4 within the 60-day rollover period authorized by section 408(d)(3) of the Code was due to medical conditions which impaired her cognitive ability to accomplish a timely rollover or understand complex financial matters.

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 4 from IRA Accounts B and C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 4 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 4 will be considered a rollover contribution within the meaning of section 408(d)(3).

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 by section 401(a)(9) of the Code.

This ruling 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.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ** ***** ***** (ID Number **-*****) by phone at (***) ***-**** or by fax at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose
- ▶ Copy of cover letter to Authorized Representative

cc: