

201047028



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 02 2010

Uniform Issue List: 408.03-00

SET: EP: RA: TI

Legend:

Taxpayer A =
IRA B =
Financial Institution C =
IRA D =
Financial Institution E =
Amount 1 =

Dear :

This letter is in response to a request for a letter ruling dated March 4, 2010, as modified and supplemented by additional correspondence dated June 14, and June 30, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from IRA B.

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

Taxpayer A, age at the time of the distribution of Amount 1 from IRA B, 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 reliance on misinformation concerning the 60-day period given her by a representative of Financial Institution C. Taxpayer A further asserts that Amount 1 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. On November 1, 2001 Taxpayer A received a distribution of Amount 1 from IRA B. Soon after receiving the check for Amount 1, Taxpayer A met with a representative with Financial Institution C to discuss the amount of time she would have to deposit the check into an IRA. Taxpayer A represents that this individual indicated she had 90 days to either reinvest the distribution with Financial Institution C without penalty, or complete the rollover of Amount 1. The check for Amount 1 was placed in a desk drawer in Taxpayer A's home.

Acting on this information, Taxpayer waited until almost the expiration of the 90-day period to complete the rollover of Amount 1. She had been preoccupied with the unemployed status of herself and her spouse. Also, in mid-December of 2001 Taxpayer A's grandmother was diagnosed with cancer, which required much of Taxpayer A's attention as well as her traveling cross country in early January to supervise her grandmother's medical care. On February 1, 2002 Taxpayer A discovered the uncashed check and immediately deposited it in IRA D with Financial Institution E. At this time, Taxpayer A was advised she must request a waiver of the 60-day rollover period from the Internal Revenue Service.

Based on the above facts and representations, you request 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) of the Code, 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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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) 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 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 her reliance on misinformation given her concerning the 60-day period by Financial Institution C.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. 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, contributed to IRA D, 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
(ID #), , at () .

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

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