



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

201144037

AUG 11 2011

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**Uniform Issue List: 408.03-00**

T:EP:RA:T1

**Legend:**

Taxpayer A	=
Financial Institution B	=
IRA X	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated April 5, 2011, as supplemented by correspondence dated May 6, May 12, and June 23, 2011, from you and your authorized representative, in which you have asked for 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 was 70½ years old at the time of the distribution of Amount 1 from IRA X, asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to erroneous advice given to Taxpayer A by a representative of Financial Institution B, which led to Amount 1 being distributed from IRA X and placed into three non-IRA savings accounts. Taxpayer A further asserts that Amount 1 has not been used for any other purpose.

Taxpayer A represents that he 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. Taxpayer A represents that when he attained age 70½ he was contacted by a representative of Financial Institution B to discuss the required minimum distribution rules as they pertained to IRA X. Taxpayer A represents that this was not the representative he usually dealt with at Financial Institution B. Taxpayer A further represents that based upon his discussion with the representative;

he believed he was required to distribute all of the funds contained in IRA X. Taxpayer A further represents that, based on this conversation with the representative at Financial Institution B, Taxpayer A withdrew Amount 1 from IRA X on June 28, 2010 (in addition to his normal required minimum distribution of Amount 2), and deposited it into three separate non-IRA savings accounts at Financial Institution B. Documentation submitted indicates that Taxpayer A speaks English as a second language and because of a hearing loss, sometimes has trouble understanding English. On July 9, 2010, Taxpayer A met with his usual representative at Financial Institution B to discuss setting up a minimum distribution for another IRA, which was accomplished at that time. The prior June 28, 2010, transactions with IRA X was not discussed at this meeting.

Taxpayer A represents that he did not become aware that the funds were not required to have been distributed from IRA X until he received Form 1099-R the following year and was informed of the problem by his accountant. Taxpayer A represents that he was subsequently told by the manager of Financial Institution B that he had been misinformed by the representative and that Amount 1 was not required to have been distributed from IRA X. Taxpayer A further represents that Amount 1 remains in the three accounts at Financial Institution B and has not been used for any purpose.

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 his assertion that his failure to accomplish a timely rollover of Amount 1 was due to the misrepresentation by a representative of Financial Institution B that all of the funds in IRA X (including Amount 1) were required to be distributed from IRA X when Taxpayer A attained age 70½.

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.

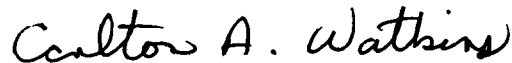
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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.

If you wish to inquire about this ruling, please contact XX XXXXXX XXXXXX (Government Identification Number XX-XXXXX) by phone at (XXX) XXX-XXXX or by fax at (XXX) XXX-XXXX. 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

cc: