



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 20 2012

201224047

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend

Taxpayer A:

IRA X:

Account Q:

Financial Institution A:

Date 1:

Amount M:

Ailment N:

Dear :

This is in response to your request dated March 24, 2011, submitted on your behalf 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 ("the Code").

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

Taxpayer A maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution A. Taxpayer A, age , asserts that, on Date 1, Taxpayer A received a distribution of Amount M. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due in part to Financial Institution A's error in failing to follow Taxpayer A's instructions, and in part to Taxpayer A's medical condition.

Taxpayer A has not used Amount M for any other purpose.

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

Taxpayer A suffers from Ailment N. During the 60-day period following the distribution of Amount M, Taxpayer A underwent treatments involving chemotherapy.

Taxpayer A had been discussing the maturing certificate of deposit (CD) in IRA X with a representative of Financial Institution A and explained that his intention was not to renew the CD but instead transfer the funds to a money market account in IRA X. Taxpayer A was asked to come into Financial Institution A's office to sign the appropriate paperwork to convert the CD to a money market account. However, Taxpayer A's medical condition made it difficult for him to go to the bank. On Date 1 Taxpayer A went to Financial Institution A's office to sign the appropriate paperwork which had been prepared by Financial Institution A on Taxpayer A's behalf and which Taxpayer A believed would transfer Amount M from a maturing CD to a money market account within IRA X. However, Financial Institution A misunderstood Taxpayer's intentions, and mistakenly transferred Amount M from IRA X into Account Q, a money market account outside IRA X. Federal Income Taxes were not withheld in the transaction. As a result of his medical condition, Taxpayer A did not realize that Financial Institution A had removed Amount M from IRA X and deposited Amount M into a non-IRA account.

Taxpayer A first learned from his CPA that the Date 1 IRA X transfer was taxable during the preparation of his tax return. Taxpayer A and his CPA contacted Financial Institution A and were informed that because the 60-day period had expired nothing could be done to correct the error.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M contained in section 408(d)(3) of the Code ("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)(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)(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.

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 his assertion that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due in part to Financial Institution A's error in failing to follow Taxpayer A's instructions, and in part to Taxpayer A's medical condition.

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 to Taxpayer A of Amount M. 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 Amount M to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), 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 Code 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, which may be applicable thereto.

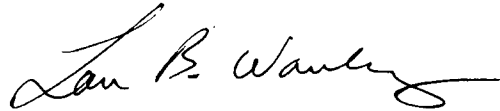
Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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.

201224047

If you have any questions, please contact XXXXXXXXXXXXXXXX (XXXXXXX) by phone at XXXXXXXXXXXX or fax at XXXXXXXX.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky".

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: