



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201230032

T:EP:RA:T2

Uniform Issue List: 408.03-00

MAY 03 2012

Legend:

Taxpayer A	=	***
IRA B	=	***
Bank C	=	***
Account D	=	***
Account E	=	***
Bank F	=	***
Practice G	=	***
Date 1	=	***
Date 2	=	***
Date 3	=	***
Date 4	=	***
Amount X	=	***
Amount Y	=	***
Amount Z	=	***

201230032

Dear ***:

This letter is in response to your request dated February 28, 2012, in which you requested 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, age 90, represents that he received a distribution of Amount Z from his Individual Retirement Account (IRA), IRA B, at Bank C. He asserts that his failure to accomplish a rollover of Amount Z within the 60-day period prescribed by section 408(d)(3) was due to his diminishing mental capacity, resulting from dementia and strokes, which affected his ability to understand and handle his financial transactions.

Taxpayer A represents that upon the expiration of his certificate of deposit at Bank C, he wished to roll over the IRA funds (minus the required minimum distribution) to a new IRA with a more competitive interest rate. On Date 1, he withdrew the funds in IRA B, totaling Amount X, and deposited Amount X in his checking account, Account D, at Bank C. Taxpayer A's required minimum distribution for that year was Amount Y; thus, the amount eligible for a rollover was Amount Z.

Taxpayer A represents that he is on medication for dementia and that he suffered minor strokes before the distribution of Amount Z. These medical conditions affected his memory and judgment during the 60-day period following the distribution of Amount Z, and caused him to neglect to deposit Amount Z into an IRA before the deadline under section 408(d)(3). On Date 2, after Taxpayer A discovered that the 60-day rollover period had expired with respect to Amount Z, he transferred Amount Z to his savings account, Account E, at Bank F. Amount Z has not been used for any other purpose.

Taxpayer A has submitted progress notes, dated Date 3 and Date 4, from his physicians at Practice G demonstrating that he receives medication for dementia and that he suffered two strokes in the two years prior to the distribution of Amount Z. The progress note dated Date 4 (approximately six months prior to the distribution of Amount Z) states that Taxpayer A's mental capacity has declined, rendering Taxpayer A no longer oriented to time, place, and person.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service (the Service) waive the 60-day rollover requirement with respect to the distribution of Amount Z from IRA B at Bank 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 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.

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 presented and documentation submitted by Taxpayer A are consistent with his assertion that his failure to accomplish a timely rollover was caused by his diminishing mental capacity, which affected his ability to handle financial transactions and resulted in Amount Z remaining in a non-IRA account after the end of the 60-day rollover period.

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 Z from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount Z to 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 Z will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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 transactions 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 ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose