



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

201236039

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 13 2012

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

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

Dear :

This letter is in response to a request for a letter ruling dated November 7, 2011, as supplemented by additional correspondence dated January 14, January 22, March 23, and April 9, 2012, in which you have requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A, age 78, represents that she took a distribution of Amount 1 from IRA B. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to her medical condition which impaired her ability to manage her financial affairs. Taxpayer A further asserts that Amount 1 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement account (IRA) under section 408 of the Code, with Financial Institution C. Taxpayer A represents that, on July 29, 2011, she withdrew Amount 1 from IRA B seeking to deposit it in another IRA which had a higher earnings performance. Taxpayer A's rollover deadline was September 27, 2011. Taxpayer A represents she misinterpreted some articles she read on the Internet causing her to believe she had more than 60 days to complete the rollover.

During the month prior to the withdrawal of Amount 1 from IRA B, Taxpayer A had surgery for a medical condition. Following the surgery and during the 60-day period, she was on pain medication and antibiotics. Taxpayer A represents that she had difficulty managing her family financial affairs during that time. The ruling request is supported by a letter from her physician's office that explains Taxpayer A's medical condition. It states that the stress of surgery and medications caused Taxpayer A to be confused for a prolonged period of time. This impacted her thinking process and ability to manage her financial affairs including her inability to complete the rollover timely into the proper account.

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 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) of the Code).

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 rollover treatment is denied for amounts required to be distributed under subsection (a)(6) or (b)(3).

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 medical condition which impaired her ability to manage her financial affairs.

Therefore, pursuant to section 408(d)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute not more than Amount 1 into 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, 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 [section 408(d)(3)(E) 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.

If you wish to inquire about this ruling, please contact  
(I.D. #           ),           , at (    )           .

Sincerely yours,

*Carlton A. Wattens*

Manager  
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437