



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

201240033

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUL 11 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Fund D =

Fund E =

Agency F =

Account G =

Financial Institution H =

Individual I =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This letter is in response to a request for a letter ruling dated April 3, 2012, as supplemented by additional information dated May 16, 2012, in which you request 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 48, at the time of the distribution of Amount 3 from IRA B, asserts that his failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 408(d)(3) was due to his incarceration which interfered with the management of his financial affairs.

Taxpayer A maintained IRA B, an individual retirement account, under section 408(a) of the Code, with Financial Institution C. Within IRA B, Taxpayer A invested in Fund D and Fund E. In March, 2011, Taxpayer A was arrested. In connection with his arrest, Agency F seized Amount 1 from Fund D and Amount 2 from Fund E (totaling Amount 3). Subsequently, Taxpayer A's attorney (Individual I) filed a motion for release of his seized assets. In July, 2011, a federal court ordered the release of all but Amount 4 of Taxpayer A's seized assets. This amount was initially deposited into Individual I's client trust account. Soon thereafter, Individual I transferred this to Taxpayer A's father's account (Account G) with Financial Institution H. In January, 2012, Taxpayer A was acquitted and released from confinement. The remaining portion of the assets seized from IRA B was refunded.

Taxpayer A received a Form 1099 R showing a distribution of Amount 3 from IRA B for the 2011 taxable year. On February 1, 2012, Taxpayer A mailed to Financial Institution C a check for Amount 3 and included an instruction that it be deposited into IRA B and allocated to Funds D and E in the same amounts at the time it was seized. On February 6, 2012, Financial Institution C deposited Amount 1 and Amount 2 (totaling Amount 3) into Funds D and E, respectively, within IRA B.

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 distributions of Amount 3.

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) 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 sections 408(d)(3)(I) and 402(c)(3)(B) 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 his assertion that his failure to accomplish a timely rollover of Amount 3 was due to his incarceration which interfered with the management of his financial affairs.

Therefore, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to Taxpayer A's contribution of Amount 3 into IRA B on February 6, 2012, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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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 (I.D. # ),  
at ( ) .

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437