



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201242021

JUL 26 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend

Taxpayer A	=
IRA Account B	=
Account C	=
Amount D	=
Financial Institution L	=
Financial Institution M	=
Financial Advisor N	=

Dear :

In a letter dated November 22, 2011, as supplemented by correspondence dated April 3, 2012, 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 were submitted under penalty of perjury in support of your request for a waiver.

Taxpayer A, age 72, represents that he withdrew all of the assets equal to Amount D from IRA Account B, an individual retirement account within the meaning of section 408(a) of the Code, which was maintained with Financial Institution L. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) was due to his communications with Financial Advisor N which led him to believe that the only restriction on redepositing Amount D in IRA Account B was a 30-day hold on reopening IRA Account B.

On August 6, 2011, Taxpayer A withdrew all of the assets from his IRA Account B equal to Amount D because he was concerned about the global economy. The Transaction Confirmation for the distribution of IRA Account B notified the account holder of a 30-day waiting period for reinvesting amounts equal to \$5,000 or more in the same IRA fund. Taxpayer A states that at the time he withdrew Amount D, Financial Advisor N, an agent of Financial Institution L, told him he could not reopen the IRA within 30 days, which led Taxpayer A to believe that he could re-establish his IRA any time after 30 days. On August 8, 2011, Taxpayer A deposited Amount D into a non-IRA money market account, Account C, with his federal credit union, Financial Institution M.

On October 28, 2011, approximately three weeks after the expiration of the 60-day rollover period, Taxpayer A learned from another agent of Financial Institution L that, to continue his retirement savings in an IRA, the law requires a taxpayer to contribute a distribution from an IRA back into another IRA within 60 days. Having passed the 60-day period, Taxpayer A immediately wrote to the Internal Revenue Service (the "Service") requesting a waiver of the 60-day requirement. Taxpayer A submitted documentation that Amount D has been maintained in Account C at all times and has not been used by Taxpayer A for any other purpose.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the rollover of the Amount D distribution from IRA Account B.

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 or 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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, 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.

Taxpayer A asserts that the only reason he withdrew Amount D was because he was concerned about the global economy. Taxpayer A represents that he always intended to put Amount D back into an IRA once the crisis was over. Taxpayer A states that his communications with Financial Advisor N led him to believe that the only restriction on re-depositing Amount D in IRA Account B was a 30-day waiting period that had to transpire before IRA Account B could be re-established.

Rev. Proc. 2003-16 provides that, in determining whether the failure to grant a waiver would be against equity or good conscience, the Service will consider the surrounding facts and circumstances including financial institution error, the time elapsed since the distribution, and the use of the amount distributed. Each of

these factors favors granting Taxpayer A's request for a waiver. Taxpayer A has not used any portion of his life retirement savings, Amount D, which was immediately deposited into Account C where it has been maintained in its entirety since the date of the distribution. Taxpayer A clearly intended to continue his IRA savings and was provided advice by Financial Advisor N regarding the timing for reopening his IRA but which did not include any mention of the 60-day rollover requirement. Three weeks after the expiration of the 60-day rollover period, when Taxpayer A learned of the 60-day requirement from another agent of Financial Institution L, he immediately prepared his request for a waiver.

The information and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount D was due to his communications with Financial Advisor N which reasonably led him to believe that the only restriction on redepositing Amount D in IRA Account B was a 30-day hold on reopening IRA Account B.

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 D. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute not more than Amount D into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day rollover requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of section 401(a)(9) minimum required distributions.

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 that may be applicable hereto.

This letter ruling is directed solely 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 have any questions regarding this ruling, you may contact

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:  
Notice of Intention to Disclose  
Deleted copy of this letter