



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201322052

MAR 05 2013

Uniform Issue List: 408.03-00

T:EP:RA:T2

Legend:

Taxpayer A = ***

Financial Institution = ***

IRA X = ***

Account Y = ***

Amount A = ***

Dear ***:

This is in response to your request dated July 6, 2012, as supplemented by correspondence dated September 12, 2012, and February 27, 2013, 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 represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his medical condition, because of which he did not realize until after the 60-day period that a distribution had been made from IRA X. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A maintained IRA X with Financial Institution as an IRA certificate of deposit. He also maintained Account Y, a regular non-IRA certificate of deposit account,

with Financial Institution. In October 2011, Taxpayer A received nearly identical notices from Financial Institution that certificates of deposit for IRA X and Account Y would mature shortly, with no language specifically identifying IRA X as an IRA. Taxpayer A has presented medical evidence of his medical condition, which impaired his ability to read and hear. On October , 20 , Taxpayer A visited Financial Institution about both notices. Because of his medical condition, Taxpayer A did not realize that one of the certificates of deposit was being held in IRA X and Financial Institution did not inform him of this. Taxpayer A elected not to renew the certificate of deposit in IRA X and instead have the amount deposited into a regular non-IRA checking account. Taxpayer A did not intend to distribute any amount from IRA X and believed he was dealing with only non-IRA certificates of deposit in Account Y. Taxpayer A did not realize the error until consulting with his tax preparer on March , 20 . Taxpayer A has not used the funds in any way and they remain deposited in the checking account.

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

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.

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) 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) (related to required minimum distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

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) 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) 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 is consistent with his assertion that his failure to accomplish a timely rollover was caused by his medical condition impairing his ability to realize that he was making a distribution from an IRA.

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 A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3).

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 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.

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Pursuant to the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact ***** at (***) ***** . Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: ***