



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200426025

MAR 31 2004

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =
Taxpayer B =
Bank C =
Bank D =
Amount E =
IRA X =

Dear *****:

This is in response to a ruling request submitted by you on *****, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A maintained an individual retirement account (IRA X), with Bank C. Taxpayer A is married to Taxpayer B. Taxpayer A, who had handled the family finances for many years, has been suffering from the increasing effects of first diagnosed in *****, at age **. Taxpayer B, age **, is being treated for compounded by , and has suffered the tragic loss of of her children through and . In the spring of ****, Taxpayer A while on a trip across the country, was hospitalized and unable to

make the return trip home alone. At that time, Taxpayer A had already experienced some confusion in personal and family matters, and he further suffered a degree of

*****, Taxpayer A closed out IRA X at Bank C by taking a full distribution of Amount E. Less than two weeks later, on *****, Taxpayer A opened up a non-IRA account at Bank D by depositing Amount E and other funds, but Taxpayer A neglected to inform Bank D that the main source of this deposit were his IRA funds. The error by Taxpayer A in completing his IRA rollover was not discovered until he began tax preparation in the spring of ****, and found that a Form 1099-R had been issued to him regarding the distribution of Amount E. Taxpayer A had no memory of moving his IRA funds, and he did not recall where he moved Amount E. No further transactions have taken place with regard to Amount E, and these funds have remained in place.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E from IRA X because the failure to waive such requirement would be against equity or good conscience. This would allow you to return Amount E to one or more IRAs restoring the tax deferred status of Amount E while not incurring the tax liability on the unplanned distribution at this time.

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 or 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)(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.

The information presented by the taxpayers demonstrates that after the deposit of IRA funds to a non-IRA account at Bank D, no further transactions were made with respect to Amount E, which has remained in place. Further, the facts submitted also demonstrate the serious medical conditions faced by Taxpayers A and B. Taxpayer A, age **, who handled all of the family finances, has suffered for some time

These conditions led to confusion regarding personal, family and business matters, and resulted in an IRA transaction that Taxpayer A was unable to complete.

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 E. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E, in cash, into one or more IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, this amount 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 that may be applicable hereto.

This 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
 , ID , at

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter