

200430038



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.03-00

APR 30 2004

Legend:

Bank A =
Amount B =
Credit Union C =
Account D =
Amount E =
IRA X =

IRA Y =

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.

You maintained an individual retirement account, IRA X, with Bank A. You withdrew funds from IRA X in Amount B on ***** and you deposited Amount B in Account D the same day with Credit Union C. You intended to accomplish a tax-free rollover of Amount B to another IRA at that time. However, Amount B was placed in a non-IRA certificate of deposit account, Account D.

Your date of birth is ***** and you were age 74 at the time of these transactions. At the time, you were not making rational or responsible decisions due to your medical conditions, including geriatric onset dementia and diabetic induced lapses of normal behavior untouched. At the present time your family has taken over the financial management of your affairs to prevent the repeat of any similar occurrences. On ***** after the aforementioned mistake was discovered, Amount E was transferred from Account D into an IRA rollover account, IRA Y, at Credit Union C.

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 B from IRA X because the failure to waive such requirement would be against equity or good conscience.

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 you presented demonstrates that you have suffered and continue to suffer from serious medical problems including dementia and diabetes. These conditions led to confusion for you in personal, business and family matters, and resulted in an IRA transaction that you were 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 B (less amounts described below). 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, Amount B (less amounts described below) deposited into IRA Y on *****will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, 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 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
at

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter