



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Uniform Issue List: 408.03-00

JUL 19 2006

T:EP:RA:UK

**Legend:**

Taxpayer A =

Institution X =

Institution Y =

Institution Z =

Amount A =

Amount B =

Dear :

This is in response to your request dated , as supplemented by correspondence dated , in which your authorized representative, on your behalf, requests 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, age 74, represents that he received a distribution from his IRA at Institution 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 misunderstanding of the rules for computing the 60-day rollover period, resulting in his reinvesting Amount B, an amount slightly less than Amount A, shortly after the end of the 60-day period. Taxpayer A further represents that Amount B has not been used for any other purpose.

Taxpayer maintained an IRA with Institution X, and was receiving distributions from his account. Taxpayer A was dissatisfied with Institution X and decided to move his IRA to Institution Y. Taxpayer filled out an IRA application with Institution Y on May 24, 2005.

Taxpayer A executed a worthless tax sale letter at Institution X on May 26, 2005, in connection with moving his IRA. Also on May 26, 2005, Institution X issued a check to Taxpayer A for Amount A, representing most of the balance in the IRA. A second check representing the remainder of the IRA was issued 5 days later but is not part of this ruling request. Taxpayer A represents that he picked up both checks from Institution X at some point on or before June 9, 2005, and deposited them into his checking account at Institution Y on June 9, 2005.

Taxpayer A represents that he believed that June 9, 2005, the day he picked up the checks from Institution X, was the date of distribution for purposes of the 60-day rollover period. On July 29, 2005, which was less than 60 days after June 9, but 64 days after May 26, Taxpayer A, intending to effect a valid rollover of the distributed amounts, funded a fixed term IRA and an IRA portfolio account at Institution Y, and purchased an annuity through Institution Z. The total amount of these transactions was equal to Amount B, which was slightly less than Amount A. Subsequently, Institution X issued a Form 1099-R, Distribution from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., which reflected May 26, 2005, as the date of distribution.

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 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 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)).

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 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 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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to roll over the distribution within 60 days of May 26, 2005, was caused by his belief that the date of distribution was June 9, 2005. The action taken by Taxpayer A was consistent with this belief. Moreover, Taxpayer A did not use the distributed amount for any purpose between the time he deposited it in his checking account and the time he invested it in other IRAs.

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 to the extent that it was reinvested as Amount B. Since Amount B has already been contributed to other IRAs, no further extension of the 60-day period is necessary. Provided that all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to the contributions, Amount B will be considered a rollover contribution within the meaning of section 408(d)(3) 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 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.

Pursuant to a power of attorney on file with the Service, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact (ID # ) at  
Please address all correspondence to SE:T:EP:RA:T4 .

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose