

200952068



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 01 2009

UIL No. 408.03-00

SE: T: EP: RA: JY

Legend:

Taxpayer A =

IRA X =

Amount A =

Amount B =

Amount C =

Amount D =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to a letter dated _____, submitted on your behalf by your authorized representative, 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, age 60, represents that he withdrew Amount A from IRA X on Date 1. Taxpayer A asserts that he failed to roll over Amount B within the 60-day period prescribed by section 408(d)(3) only because the due date for repayment, Date 2, fell on a bank holiday. Taxpayer A represents that he deposited Amount

C and Amount D (together totaling Amount B) into IRA X on Date 3, the first business day following the bank holiday.

Taxpayer A represents that, during , he was responsible for paying two residential mortgages; one on a new house purchased in and the other on his former residence that had not yet sold. To meet those payments, Taxpayer A represents that he withdrew money from his retirement accounts, including IRA X, with the intention of rolling over only Amount B within 60 days. Taxpayer A asserts that he would have repaid Amount B to IRA X within 60 days had the due date for repayment not fallen on Date 2, which was a bank holiday. Although Taxpayer A represents that checks totaling Amount B were received by IRA X personnel on Date 2, they could not be deposited until Date 3 because of the bank holiday.

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

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 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)(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.

Revenue Procedure 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.

Documentation shows that checks in Amount C and Amount D were received by the custodian of IRA X on Date 2. However, due to the bank holiday, they were not deposited into IRA X until Date 3. The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to timely roll over Amount B was caused by the fact that the due date for repayment of Amount B fell on a bank holiday, which was one day after the 60-day rollover period.

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 from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount B, which was deposited into IRA X, 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 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.

200952066

Page 4 of 4

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office

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

Sincerely yours,

for *Ada Perry*
Laura B. Warshawsky, Manager,
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: