



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200704034

OCT 31 2006

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Amount B =

IRA X=

Company D=

Bank F=

Company G =

State M=

Dear :

This is in response to your letter dated _____, 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 _____, received Amount B from IRA X. Taxpayer A asserts that _____ failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to hurricane conditions in _____ home state of _____. Taxpayer A attempted to rollover Amount B, however the 60-day rollover period had already expired.

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Taxpayer A was a resident of the state of . On , Taxpayer A directed Company C to transfer Amount B from IRA X into non-IRA account at Bank F, with further instructions for Bank F to transfer Amount B to Company G in order to provide sufficient proof of assets and to pay certain closing costs in conjunction with proposed purchase of a house in State M. Amount B was transferred to Company G on . Closing on a house in State M took place on .

While Taxpayer A was in the process of purchasing a home in State M, was also in the process of selling residence in . This residence was scheduled to close well within the 60-day rollover period. Taxpayer A intended to return Amount B to IRA X upon receiving the proceeds from the sale of residence.

However, from through , several tropical storms and hurricanes swept through where residence was located which delayed the closing process. As a result, Taxpayer A did not return Amount B to IRA X within the 60-day rollover period. The sale on residence was final on , at which time the funds were available to Taxpayer A to return Amount B to IRA X. However, the 60-day rollover period had expired.

Shortly after receiving the proceeds from the sale of , Taxpayer A discussed IRA X with IRA provider. was told that since the 60-day rollover period had passed it was up to the IRS to determine whether or not Amount B would be declared income. provider was not aware of Rev. Proc. 2003-16 or of News Release, IR-2004 -115.

On , the Internal Revenue Service issued News Release, IR-2004- , in which it announced special tax relief for taxpayers in the Presidential Disaster Area that was struck by . The special relief, gave affected taxpayers until December 30, , to perform certain time-sensitive actions described in Treasury Regulations 301. 7508A-1(c)(1) which includes the making of a rollover under section 408(d)(3). Taxpayer A was an affected taxpayer located in the Presidential Disaster Area and accordingly had until December , to complete the rollover. Neither the IRA provider nor Taxpayer A was aware of this relief.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount B.

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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.

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Rev. Proc. 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 Taxpayer A demonstrates that Taxpayer A took a distribution in order to provide sufficient proof of assets and to pay certain closing costs in conjunction with proposed purchase of a home in State M. Taxpayer A intended to redeposit Amount B using the proceeds from the sale of residence. Taxpayer A used the distribution in a transaction that, in essence, amounts to a short term interest-free loan. The Committee Report describing legislative intent indicates that Congress enacted the rollover provision to allow portability between eligible plans including IRAs. In general, using a distribution as a short term loan to cover personal expenses is not consistent with the intent of Congress to allow portability between eligible plans. However, in this case, Taxpayer A was an affected taxpayer as described in News Release IR-2005-115 and had the funds available to make a rollover contribution during the extension period granted by News Release IR-2005-115. Both Taxpayer A and IRA provider were unaware of the availability of this extension period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, 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 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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If you wish to inquire about this ruling, please contact _____, at
Please address all correspondence to _____

Sincerely yours,

Ada Perry

for

, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose