



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200850057

SEP 18 2008

Uniform Issue List: 408.03-00

Legend:

- Taxpayer A = *****

- Financial Institution B = *****
- Financial Institution C = *****
- IRA Account D = *****

- IRA Account E = *****
- Amount 1 = *****
- Amount 2 = *****

*****.

This letter responds to correspondence dated April 11, 2007, as supplemented by additional correspondence dated June 8, 2007, in which your authorized representative requested, on your behalf, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the requested ruling:

Taxpayer A, age 80, maintained two accounts with Financial Institution B. Account D was a qualified individual retirement arrangement ("IRA") established and maintained under section 408 of the Code; a second account is described as a "regular account" that was not part of a qualified retirement arrangement. In late *****, Taxpayer A withdrew Amount 1 from IRA Account D and Amount 2 from his regular account at Financial Institution B, and deposited both Amounts 1 and 2 into Account E, a new IRA that he established at Financial Institution C. Because Amount 2 came from Taxpayer A's nonqualified account at Financial Institution B, it represented a transfer of non-IRA money into IRA Account E.

A few days later, on *****, Taxpayer A, in a confused and disoriented state,¹ insisted on withdrawing both Amounts 1 and 2 (rather than withdrawing only Amount 2, the non-IRA money) from IRA Account E. Taxpayer A then deposited Amounts 1 and 2 into a non-qualified certificate of deposit at Financial Institution C. Taxpayer A became aware of his mistake with regard to his IRA assets when he went to his tax preparer in ***** for preparation of his **** income tax return. At that time the 60-day period for completion of a rollover to another IRA had expired. Moreover, Taxpayer A had received Amounts 1 and 2 from IRA Account E on *****, and Amount 1 had been rolled over previously from IRA Account D to IRA Account E in November of the same year.

Based on the facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code in this instance with respect to Amount 1.

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:

¹ At the time he withdrew all the money from his IRA at Financial Institution C, Taxpayer A penned a note to the Member Services Representative at Financial Institution C stating that he wanted to "correct a mistake" that he had made by depositing Amount 2 in a Financial Institution C IRA.

(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)(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.

While the Congress has authorized the Service to waive the 60-day requirement of section 408(d)(3)(A) of the Code for rollovers of IRA assets in appropriate circumstances, no similar authority exists for the Service to waive the rule of section 408(d)(3)(B). Thus, once a Taxpayer has completed a valid IRA rollover, he or she is barred from completing another valid rollover for a period of 1 year after the first rollover occurred.

In this case, Taxpayer A completed a valid, qualified rollover from IRA Account D to IRA Account E in ***** of ****. When Taxpayer A again withdrew his IRA assets from Account E on ***** *, ****, section 408(d)(3)(B) of the Code barred the application of the rollover rule of section 408(d)(3)(A) with respect to any subsequent attempt to complete a rollover of the IRA assets received by Taxpayer A on ***** *, ****. Therefore, Taxpayer A's ***** *, **** withdrawal of IRA funds (Amount 1) from IRA Account E is a taxable event under section 408(d)(1) of the Code, and the Service must decline to provide a waiver of the 60-day rule in this case.

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.

The original of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1