



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201043048

AUG 05 2010

Uniform Issue List: 408.03-00

SE: T. EP. RA: TL

**Legend:**

Taxpayer A:

\*\*\*\*\*

IRA X:

\*\*\*\*\* maintained by \*\*\*\*\* on behalf of  
\*\*\*\*\*

Account D:

\*\*\*\*\* maintained by \*\*\*\*\*  
on behalf of \*\*\*\*\*

Amount A:

\*\*\*\*\*

Financial Institution A:

\*\*\*\*\*

Financial Institution B:

\*\*\*\*\*

Date 1:

\*\*\*\*\*

Date 2:

\*\*\*\*\*

Date 3:

\*\*\*\*\*

Dear \*\*\*\*\*,

This is in response to a request submitted by Taxpayer A dated \*\*\*\*\*  
as supplemented by additional correspondence submitted on \*\*\*\*\*  
and \*\*\*\*\* in which Taxpayer A 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 \*\* years old, asserts that he requested a trustee to trustee transfer of his Individual Retirement Arrangement (IRA), IRA X, and that his failure to accomplish a rollover of Amount A was due to the error of Financial Institution B in failing to follow Taxpayer A's intent and instructions. Taxpayer A represents that Amount A has not been used for any other purpose.

On Date 1, Taxpayer A requested that Amount A be transferred from IRA X with Financial Institution A to an IRA with Financial Institution B. On Date 2 Amount A was transferred from IRA X to Account D, which was maintained by Financial Institution B, Account D is a non-IRA account. On Date 3 Taxpayer A realized that his requested trustee to trustee transfer from IRA X to an IRA with Financial Institution B had not occurred, which was after the expiration of the 60-day rollover period.

Taxpayer A has provided documentation that representatives from both Financial Institution A and Financial Institution B knew Amount A was held in an IRA and that both Financial Institution A and Financial Institution B intended for a trustee to trustee transfer from IRA X to an IRA with Financial Institution B to occur. Taxpayer A has provided documentation that Financial Institution A issued a check for Taxpayer A's benefit to Financial Institution B which represented Amount A from IRA X. Taxpayer A has provided documentation that IRA X was intended to be transferred directly into another IRA account. Additionally, Taxpayer A has provided documentation that represents the failure to rollover the IRA within the 60 day period was due to an administrative error by Financial Institution B.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A 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 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)(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 section 408(d)(3)(A) 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) of the Code, 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 Taxpayer A submitted is consistent with Taxpayer A's assertion that his failure to accomplish a timely rollover was caused by an error committed by Financial Institution B.

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 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of

201043046

this letter ruling to contribute Amount A 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 contribution, Amount A 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.

If you wish to inquire about this ruling, please contact \*\*\*\*\* , Tax Law Specialist Employee Plans Technical Group 2 at (\*\*\*) \*\*\*\*\* or via fax at (\*\*) \*\*\*\*\* . Please address all correspondence to \*\*\*\*\* .

Sincerely yours,

  
\*\*\*\*\*  
Employee Plans Technical Group 2

- Enclosures:
- Deleted copy of ruling letter
- Notice of Intention to Disclose