Uniform Issue List: 408.03-00

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

200404051

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 30 2003

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T:EP:RA:T4

Legend:

Individual A	=	******************
Broker B	=	***********
IRA X	=	****************************
Amount C	=	$*******
Amount D	=	$******
Amount E	=	$*******
Amount F	=	$******

Dear Individual A:

This is in response to a request submitted on your behalf by your authorized representative by letter dated July 1, 2003, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

In 1996, Individual A suffered from a stroke that forced her into retirement and onto disability insurance. Maintaining a home with her disabilities became so burdensome she applied to an assisted living community, and around June 2002 an apartment opened up.

A supporting schedule for Individual A's federal income tax return for 2002 shows that Individual A withdrew Amount C from IRA X in 2002, and re-contributed Amount D back into IRA X within 60 days. Amount E is an IRA distribution, and reported on her federal income tax return for 2002. Individual A requests a waiver in order to rollover Amount F into her IRA.

Individual A used Amount E for the purposes of making a down payment on her apartment and for unexpected repairs to her home in order to prepare it for sale.

Because Individual A was disabled plus the turmoil caused by relocating and unexpected substantial repairs to her home, she could not reasonably satisfy the 60-day rollover limitation.

Based on the above facts, you request a ruling that the Service waive the 60-day rollover requirement with respect to the portion of the distribution from IRA X of Amount F, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)(I) of the Code.

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^{th} 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^{th} 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 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, 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; 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.

It is represented that the 1-year rollover limitation under section 408(d)(3)(B) of the Code is not applicable in your case.

Information presented demonstrates substantial hardship by reason of the turmoil caused by your wife's injury and hospitalization and its impact upon your ability to timely deposit the amount you received into an IRA. The failure to waive the 60-day requirement would be against equity or good conscience.

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 IRA X of the Amount D. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, in cash, into another IRA provided all other requirements of section 408(d)(3) of the Code are satisfied, except the 60-day requirement with respect to such contribution, then, 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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact , at

Sincerely yours,

Alan C. Pipkin, Jr., Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437