



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

200436021

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

JUN 10 2004

Uniform Issue List: 408.03-00

Legend:

Individual A =

Bank B =

IRA X =

IRA Y =

IRA Z =

Amount D =

Amount E =

Amount F =

Date M =

Date N =

Date O =

Date P =

Dear:

This is in response to your request for a ruling dated March 26, 2003, in which your authorized representative requested a waiver of the 60-day rollover requirement 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:

Individual A maintained IRA X and IRA Y at Bank B. Individual A took a distribution from IRA X of Amount D on Date M. On Date N, Individual A took a distribution from IRA Y of Amount E. Amounts D and E were transferred to Individual A's non-IRA money market account at Bank B on Dates M and N, respectively. Individual A left these funds in his non-IRA money market account intending to roll them over into a new IRA within the 60-day time-period allowed by section 408(d)(3) of the Code.

Soon after Date N, Individual A's spouse began having a series of medical problems. Individual A, who is age 73, also suffers from memory impairment. As a result of the effects of Individual A's and Individual A's spouse's medical conditions, Individual A did not redeposit Amount F (the sum of Amount D and Amount E) into an IRA within 60 days. On Date O, Individual A received a Form 1099-R from Bank B reporting IRA withdrawals of Amount F. At that time Individual A realized that he had not completed his planned rollovers. On Date P, Individual A deposited Amount F in IRA Z. Individual A made no rollovers from an IRA within the one year period prior to Date M. Individual A made no other withdrawals from an IRA during 2002.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount F, because the failure to waive such requirement would be against equity or good conscience.

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)(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; (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; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates that your health problems and your spouse's medical conditions prevented you from realizing that you had not completed your planned rollovers within 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 part of Amount F that you deposited into IRA Z on Date P that constitutes an eligible rollover distribution pursuant to section 402(c)(4). An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include distributions required by section 401(a)(9) (because you are over age 70 ½ minimum distributions are required under this Code section for the taxable year of the IRA distributions). If all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to the part of Amount F that constitutes an eligible rollover distribution, such 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 has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions about this ruling, please contact.....

Sincerely yours,

*for* *Adia Perry*  
Donzel H. Littlejohn, Manager  
Employee Plans Technical Group 4