



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

200613035

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN - 5 2006

SE:T:EP:RA:T3

UIC: 408.03-00

LEGEND:

Taxpayer A:

Individual B:

Association C:

Company D:

Amount 1:

IRA X:

Dear

This is in response to your letter dated _____, as supplemented by additional correspondence, in which you request an extension of the 60-day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code applicable to individual retirement accounts ("IRAs").

Your request is based on the following facts and representations.

Taxpayer A, age 72, represents that he received a distribution from IRA X totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's mental condition which impaired his ability to make financial decisions during the 60-day period.

Taxpayer A maintained IRA X with Company D. On or about _____, 2004, Taxpayer A withdrew Amount 1 from his IRA X seeking better investment returns. On or about _____, 2004, Taxpayer A states he was placed on administrative leave from his position with Company D because of his mental health problems.

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Documentation, including a statement detailing Taxpayer A's debilitating mental condition, shows that Taxpayer A was under the care of mental health specialists, including Individual B of Association C, during the period Mid-April, 2004 until early January, 2005. Taxpayer A has also submitted documentation that shows that during this same period his medical condition also resulted in his failure to handle his general financial affairs including making mortgage payments, paying utility bills and making credit card payments.

On or about _____, 2005, Taxpayer A contributed, as a purported rollover contribution, Amount 1 into an IRA maintained in his name with Company D.

Based on the facts and representations, you (on behalf of Taxpayer A) request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount 1 which was rolled over into an IRA on or about _____, 2005, which was after the expiration of the 60-day rollover period, because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your ruling request, 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)).

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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.

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), 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 a failure on the part of Taxpayer A to accomplish a timely rollover because of his mental condition which rendered him dysfunctional, and impaired his ability to handle his financial affairs.

Thus, based on the above facts and representations, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 1. Pursuant to this ruling letter, Taxpayer A's rolling over Amount 1 into an IRA on or about _____, is deemed to constitute a valid rollover contribution, except as noted below. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, were met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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We note that Taxpayer A has attained age 70 ½. Thus, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts required to be distributed pursuant to Code section 401(a)(9) (made applicable to an IRA pursuant to Code section 408(a)(6)) with respect to any calendar year.

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 _____, I.D. # _____, at _____ . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

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