



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

FEB 07 2006

200618033

SET:EP:RA:T1

Uniform Issue List: 408.03-00

Legend:

Taxpayer A.....

Financial Institution N.....

Amount 1.....

IRA X.....

Account Y.....

Dear

This is in response to a letter dated August 24, 2005, as supplemented by correspondence dated October 18, and November 22, 2005, and January 13 and 20, 2006, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). You submitted the following facts and representations under penalties of perjury in support of your request.

Taxpayer A, age 71, 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) of the Code was due to a misunderstanding with Financial Institution N and Taxpayer A's medical condition which led to Amount 1 being placed into a non-IRA account. Taxpayer A represents that Amount 1 has not been used for any other purpose.

Taxpayer A maintained IRA X with Financial Institution N. In anticipating the need to begin taking minimum distributions from IRA X, Taxpayer A telephoned Financial Institution N and discussed various distribution options. Taxpayer A represents that his intention was to open a non-IRA money market account that would receive his minimum distributions from IRA X. The representative from Financial Institution N completed the necessary paperwork and mailed the paperwork to Taxpayer A for his signature.

For the past three years, Taxpayer A has had a tumor in his ear, which causes severe ringing, vertigo, and hearing loss. Taxpayer A is also being treated for glaucoma. As a result of these medical conditions and relying on his telephone conversations with the representative of Financial Institution N, Taxpayer A signed and returned the form opening the new account and distribution form for IRA X. Taxpayer A represents that he was not aware that the distribution form for IRA X provided for a total distribution. On \_\_\_\_\_, Amount 1, representing a total distribution, was transferred from IRA X to non-IRA account Y at Financial Institution N. While preparing his \_\_\_\_\_ income tax returns on \_\_\_\_\_, after the expiration of the 60-day period, Taxpayer A discovered that all of the assets of IRA X, Amount 1, had been shifted into a non-IRA account with Financial Institution N, rather than his minimum distribution for \_\_\_\_\_. Taxpayer A immediately contacted the representative from Financial Institution N, who suggested he submit a request for a waiver.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to the distribution of 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.

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) 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)(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) 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).

Rev. Proc. 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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by his ongoing medical condition and a miscommunication with a representative of Financial Institution N concerning his minimum withdrawals from IRA X.

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 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into an IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 that may be applicable thereto.

**200618033**

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

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling  
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