



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200634071

APR - 4 2006

Uniform Issue List: 408.03-00

SET:EP:RA:TY

Legend:

Taxpayer A =  
Company B =  
Amount C =  
Company D =  
Date E =  
Date F =  
IRA X =

Dear

This is in response to a ruling request submitted by your authorized representative on \_\_\_\_\_ in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A, age \_\_\_\_\_, represents that he received a distribution from IRA X totaling Amount C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a misunderstanding with Company D which led to Amount C being placed in a non-IRA account. Taxpayer A further represents that Amount C has not been used for any other purpose.

On Date E Taxpayer A transferred by means of a wire transfer a total distribution of Amount C from IRA X to Company D. Taxpayer A's intention in this transaction was to accomplish a direct rollover of Amount C into another IRA. Taxpayer A closed IRA X and on the same day opened an account with Company D which Taxpayer A understood to be an IRA. Following a meeting with his accountant on Date F, Taxpayer A received a Form 1099-R regarding a distribution of Amount C from IRA X. Taxpayer A then contacted Company D and learned, for the first time, that Company D is not now and was never approved to be an IRA custodian, and that Company D had placed Amount C into a non-IRA account. The representative for Company D who assisted Taxpayer A with this transaction had represented that Amount C would be placed in an account specifically designed and maintained as an IRA. Amount C has remained untouched in the non-IRA account with Company D and has not been used for any other purpose.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount C from IRA X.

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 or 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 or 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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, 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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by a misunderstanding with Company D which placed Amount C in a non-IRA account after representing that Amount C would be placed in an account specifically designed and maintained as an IRA.

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 C from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Taxpayer A is hereby granted a period of 60-days in which to deposit Amount C into a rollover IRA, and Amount C 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 that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited 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 regarding this ruling, you may contact

Sincerely yours,

 *Donzell Littlejohn*  
Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted copy of letter