



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200634072

APR - 4 2006

Uniform Issue List: 408.03-00

SE:T:EP:RA:T4

Legend:

Taxpayer A            =

Company B            =

Amount C             =

Credit Union D       =

Date E                =

IRA X                 =

Dear

This is in response to your ruling request dated \_\_\_\_\_ for 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:

Taxpayer A, age \_\_\_\_\_, represents that she received a distribution from IRA X totaling Amount C. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to Taxpayer A's medical condition which impaired her ability to accomplish a timely rollover. Taxpayer A further represents that Amount C has not been used for any other purpose.

On Date E Taxpayer A received Amount C in the form of a check representing the entire account balance in IRA X, held with Company B. Taxpayer A intended to roll over Amount C within 60 days to a certificate of deposit to be held in an IRA with Credit Union D. However, due to memory lapses caused by side effects of Taxpayer A's medications, Taxpayer A did not complete the intended rollover within 60 days, which ended on Christmas day. A few days after the rollover period had expired, Taxpayer A attempted to roll over Amount C into an IRA certificate of deposit (CD) with Credit Union D, but was unable to complete the rollover due to the expiration of the 60-day period.

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 C.

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 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 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 demonstrates that your failure to complete the rollover within the 60-day period was due to the periodic memory lapses that you experience, caused by the side effects of your medications. Further, the information presented shows your initial intent to rollover Amount C into an IRA as well as your actual attempt to execute the rollover within a few days after the expiration of 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 distribution of Amount C. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into a rollover IRA. 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, Amount C will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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 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.

If you have any questions regarding this ruling, you may contact

Sincerely yours,

*JSI Adam Perry*  
*Ja* Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted copy of this letter