



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 15 2005

Uniform Issue List: 408.03-00

T:EP:AA:TI

Legend:

Taxpayer A.....

Amount P

Amount Q.....

Company S

IRA X.....

IRA Y.....

Dear :

This is in response to your letter dated January 8, 2005, as supplemented by correspondence dated February 3, 2005, and February 17, 2005, 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"). The following facts and representations were submitted under penalty of perjury in support of your request.

Taxpayer A maintained IRA X and IRA Y, two Individual Retirement Accounts ("IRAs") under Code section 408(a), with Company S. The assets of IRA X and IRA Y were each invested in a certificate of deposit ("CD"). On October 11, 2004 the CDs held in IRA X and IRA Y matured. Taxpayer A notified Company S that on maturity, she wanted to roll over these funds into two IRA CDs at another bank. On October 13, 2004, Company S mailed Taxpayer A two checks in Amount P and Amount Q, the maturity value of the CDs. Intending to roll over Amount P and Amount Q to new IRAs, Taxpayer A did not cash the checks.

On October 20, 2004 Taxpayer A's father began experiencing problems with his pacemaker for a chronic heart condition. On October 29, 2004 he was hospitalized and had an operation. For several weeks after the operation, Taxpayer A was involved in daily caring for her father and taking him to doctors' appointments. Taxpayer A's father later became ill which complicated and

delayed his recovery. On January 6, 2005, Taxpayer A called the bank where she wanted to open new IRAs for purposes of rolling over IRA X and IRA Y. This bank informed Taxpayer A that the 60-day period for rollovers had passed. Taxpayer A immediately called the local Internal Revenue Service ("Service") Office and was informed of the possibility of obtaining a waiver.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to IRA X and IRA Y because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines IRA rollovers and provides the rules applicable thereto.

Code section 408(d)(3)(A)(i) 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 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.

Code section 408(d)(3)(B) 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 one-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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) 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).

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 Code 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 in this case indicates that Taxpayer A had intended to roll over IRA X and IRA Y and retained the checks for this purpose.

Taxpayer A was involved in providing care on a daily basis for her seriously ill father and due to her intensive responsibility and involvement, she missed the 60-day period for rollovers.

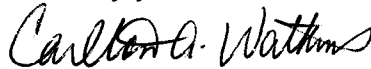
Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount P and Amount Q. Provided all other requirements of section 408(d)(3) are met with respect to such contribution, this amount will be considered a rollover contribution within the meaning of section 408(d)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other Code section which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) 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, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice 437