



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200634056

MAY 16 2006

Uniform Issue List: 408.03-00

SET: EP:RATY

Legend:

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

This is in response your ruling request dated _____ 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 have been submitted in support of the ruling requested:

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) of the Code was due to his misunderstanding of the tax laws and miscalculation of his tax liability.

On Date D Taxpayer A received a distribution in the form of stock with a value of Amount C from IRA X, and transferred the distribution to his personal non-IRA account with Company B. Taxpayer A asserts that he misunderstood the current Income Tax Regulations which require mandatory IRA withdrawals after attainment of age 70 1/2. Taxpayer A further asserts that he believed, erroneously, that his IRA withdrawal would be a prudent withdrawal at that time. Taxpayer A did not discover his error until he finished preparing his **** federal income tax return on Date E. By that time the 60-day rollover period had expired. Prior to this distribution Taxpayer A stated that he had never made any withdrawals from an IRA. Taxpayer A indicates that Amount C remains in his personal non-IRA account since Date D.

Based on the above facts and representations, you request that the Service waive the 60 day rollover requirement with respect to 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 distribute, 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 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 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 demonstrates that you made a decision to take a distribution of Amount C from IRA X that you knew was taxable. However, when preparing your **** federal tax return you regretted your decision because of the resulting tax liability. In this case there were no circumstances outside of your reasonable control which caused you to fail to satisfy the 60-day rollover requirement. The circumstances you have described do not justify the granting of a waiver of the 60-day rollover period under any of the factors enumerated in Revenue Procedure 2003-16.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount C.

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,

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

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Enclosures:

Notice of Intention to Disclose
Deleted copy of letter