

200440027



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL -8 2004

T:EP:BA:T4

Uniform Issue List: 408.03-00

Legend:

Individual A =

Individual B =

Company B =

IRA X =

Amount D =

Date M =

Date N =

Dear :

This is in response to your request of March 3, 2003, through your authorized representative, for a waiver of the 60-day rollover requirement in section 408(d)(3) of the Internal Revenue Code (Code).

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The following facts and representations have been submitted under penalty of perjury in support of the ruling request:

Individual A is age [redacted] and has been diagnosed with [redacted]. Individual B, the daughter of Individual A, was granted a durable power of attorney for Individual A on Date M to handle the financial affairs of Individual A.

Individual A maintained IRA X at Company B. Unknown to Individual B, Individual A, took a distribution from IRA X of Amount D on Date N and deposited Amount D in a money market account with Company B where such funds remain.

As a result of the effects of Individual A's medical condition, Individual A did not redeposit Amount D into an IRA within 60 days of Date N. Individual A made no rollovers from an IRA within the one year period prior to or after Date N.

Based on the above facts and representations, Individual A, through Individual B, requests a ruling that the Service waive the 60-day rollover requirement with respect to Amount D minus the required minimum distributions because the failure to waive such requirement would be against equity or good conscience.

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 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; 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 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)).

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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 may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where 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.

Rev. Proc. 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; and (4) the time elapsed since the distribution occurred.

Because of the effects of your medical condition, Amount D was not redeposited within 60 days. Amount D remains in a money market account with Company B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the part of Amount D that constitutes an eligible rollover distribution pursuant to section 402(c)(4). An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include distributions required by section 401(a)(9) (because you are over age 70 ½ minimum distributions are required under this Code section for the taxable year of the IRA distribution). If all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to the part of Amount D that constitutes an eligible rollover distribution, such amount 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, which may be applicable thereto.

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This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions please contact.....

Sincerely yours,

151 Ada Perry
for Donzel H. Littlejohn, Manager
Employee Plans Technical Group 4