

INTERNAL REVENUE SERVICE

JAN - 9 2006

200614028

Uniform Issue List: 408.03-00

SE: T: EP: RA: T 3

Legend:

IRA X =

Credit Union A =

Amount B =

Dear

This is in response to correspondence dated June 25, 2005, as supplemented by correspondence dated December 8, 2005, and a conversation with a representative of this office held on December 29, 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 have been submitted under penalty of perjury in support of the ruling requested:

You are 71 years old. You maintained an Individual Retirement Arrangement, IRA X, with Credit Union A. On _____ you received a distribution from IRA X of Amount B. Subsequently, you deposited Amount B into your checking account at Credit Union A.

You assert that when you received the IRA X distribution you were aware of the 60-day rollover requirement. Although you have represented that it was always your intent to return at least a portion of your IRA X distribution to an IRA with Credit Union A, you have also asserted that during the 60-day period it was possible that at least some of this distribution was used to pay medical expenses incurred as a result of your daughter's operation and recuperation. Her operation was on _____ and her hospitalization was from _____ through _____. In addition, she was recuperating for a period of ten weeks. The 60-day rollover period associated with your distribution from IRA X expired on _____.

A few days after the expiration of the above-described 60-day rollover period, you contacted Credit Union A to accomplish your intended rollover. However, you were informed that the 60-day rollover period had expired a day or two earlier. You assert that the reason why you missed the 60-day rollover deadline was your concern over your daughter's operation and hospitalization.

You have also asserted that, although your IRA X distribution may have had to be used to cover your daughter's medical expenses, you took steps to insure that funds would be available to be used to timely accomplish your intended rollover. In this regard, the Service notes that documentation submitted in conjunction with your ruling request shows that as of _____ you had an amount in excess of Amount B available to you through your line of credit established through Credit Union A.

Based on these facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution 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 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)).

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 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).

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 may waive the 60-day requirement under section 408(d)(3)(A) 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, 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 you presented and the documentation you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by your concern over your daughter's operation and hospitalization, which occurred during the 60-day rollover period applicable to the distribution of Amount B from IRA X, which period expired during said hospitalization.

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 B (less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount B (less amounts described below) into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the contribution of Amount B into one or more IRAs described in Code section 408(a) will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) with respect to the calendar year.

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.

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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

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If you wish to inquire about this ruling, please contact _____, I.D. # _____, at
(not a toll-free number). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

_____, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose