



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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Legend:

- Taxpayer A = \*\*\*\*\*
- IRA X = \*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*
- Amount A = \$\*\*\*\*\*
- Bank B = \*\*\*\*\*  
\*\*\*\*\*
- Investment Company C = \*\*\*\*\*
- Date 1 = \*\*\*\*\*
- Date 2 = \*\*\*\*\*
- Date 3 = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your request dated August 25, 2005, supplemented by correspondence dated March 2, 2006, submitted by your authorized representative 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:

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Taxpayer A, age 77, represents that she received a distribution from IRA X totaling Amount A. 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 a mistake made by Bank B which led to Amount A being placed in a non-IRA account. Taxpayer A further represents that Amount A remains in the non-IRA account with Bank B and has not been used for any other purpose.

On Date 1 Taxpayer A went to Bank B and at the advice of a financial planner at Bank B she opened an individual retirement account at Bank B. On Date 1 Taxpayer A called Investment Company C and requested that IRA X be closed and the full amount in IRA X be distributed to her. On Date 2, Taxpayer A received Amount A from IRA X. She took the distribution check to Bank B thinking it would be deposited in her IRA, rather than a certificate of deposit. On Date 2, when Taxpayer A went to Bank B to deposit Amount A, she did not speak to the same financial planner at Bank B who established her IRA on Date 1. Instead, she spoke with a different employee of Bank B who erroneously deposited Amount A into a non-IRA account. Taxpayer A did not discover the error until Date 3 when she began to prepare her income tax return. Taxpayer A had no rollover contributions prior to the distribution of Amount A on Date 2.

Based on the above 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 Amount A.

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 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

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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 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 (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 and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error committed by Bank B which led to Amount A being placed in a non-IRA account.

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 A from

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IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met such contribution, will be considered a rollover contribution within the meaning of section 408(d) 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, which may be applicable thereto.

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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact \*\*\*\*\*, I.D. #\*\*\*\*\*, at (\*\*\*)  
\*\*\*\_\*\*\*\*

Sincerely yours,

*/s/ Donzell Littlejohn*  
Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437