

200406055



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 13 2003

T:EP:BA:T4

Legend:

Individual A = *****

Individual B = *****

Bank B = *****

IRA X = *****

Amount D = \$*****

Amount E = \$*****

Bank C = *****

Dear Individual B:

This letter is in response to your request on behalf of your father, Individual A, dated June 15, 2003, that we waive the 60-day rollover requirement of section 408(d)(3) of the Internal Revenue Code ("Code"). He and his wife are in an assisted living facility. You have power of attorney to manage their affairs. You supplemented your request with correspondence dated September 20, 2003.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

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Individual A had heart valve replacement surgery in January of 2002. He suffered mental and physical difficulties following the operation. You submitted a documentation that the effects of this surgery permanently impaired Individual A's ability to make rational judgments about his personal and financial affairs.

Individual A maintained IRA X at Bank B. Without consulting with you, Individual A took a distribution from IRA X of Amount D in April of 2002, a maturing certificate of deposit. On April 15, 2002, he deposited Amount D representing the distribution from IRA X into a checking account at Bank C.

You learned about the distribution from IRA X when Individual A received a Form 1099-R from Bank B in January of 2003.

Individual A is over age 70½. He received required distributions including Amount E for 2002 and for prior years from IRA X. He reported Amount E as an IRA distribution on his and his wife's joint Federal tax return for 2002. Amount D does not include Individual A's required distribution for 2002. Individual A made no rollovers from IRA X prior to his distribution in 2002.

Individual A requests a ruling that the Service waive the 60-day rollover requirement because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)(I) of the Code.

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)(l) 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)(l) 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)(l), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; 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 one-year rollover limitation under section 408(d)(3)(B) of the Code does not apply to a situation where the trustee or custodian of an IRA makes a direct transfer of the amount in the IRA to the trustee or custodian of another IRA.

Information presented demonstrates substantial mental and physical hardship, and indicates that Individual A could not reasonably satisfy the requirement that Amount D be deposited in an IRA within 60 days of the distribution from IRA X. The failure to deposit Amount D into another IRA within the 60-day period was beyond the reasonable control of Individual A, and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of IRA X of the Amount D. Individual A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D in cash to another IRA, provided all other requirements of section 408(d)(3) of the Code are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. In addition, Individual A must receive a required distribution for 2003.

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,

for *Ada Perry*
Alan C. Pipkin, Jr., Manager
Employee Plans Technical Group 4

Enclosures:

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