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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Uniform Issue List: 408.03-00

MAR 31 2004

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

Bank E=

Brokerage Firm F=

Dear Taxpayer A:

This is in response to your letter 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 under penalty of perjury in support of the ruling requested:

On \_\_\_\_\_, Taxpayer A went to Bank E where he had established IRA C and other investments to redeem some of his maturing investments.

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Taxpayer A wanted to make withdrawals from maturing Certificate of Deposits and to invest those funds in an investment product that offered him a higher rate of return. As part of this withdrawal, Taxpayer A received Amount B from IRA C. Taxpayer A invested Amount B and other funds that were also withdrawn by purchasing investment bonds while being assisted by Brokerage Firm F.

It was not until Taxpayer A received his Form 1099R showing Amount B as a taxable distribution that Taxpayer A realized that the maturing investment funds withdrawn as Amount B on , were funds from IRA C. The bank teller that issued the check for Amount B gave Taxpayer A no explanation or information about the distribution being from an IRA account and that Taxpayer A had a 60-day period to roll over Amount B into an IRA account to avoid any adverse tax consequences. Any effort to rectify the incorrect distribution from IRA C with Bank E was too late because the 60-day period allowed by the Code to avoid the tax liability had already expired.

Bank D acquired Bank E where IRA C had been established. On , Bank D wrote a letter where it admitted errors in terminating IRA C without explaining to Taxpayer A that the distribution of Amount B was from an IRA account and by not requesting him to complete an IRA disbursement form.

You represent that no other amount was distributed from IRA C within the one year period since the last distribution.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B 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 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

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- (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 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)(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 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.

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 by Taxpayer A demonstrates that he relied completely on Bank E's teller who handled his request of . Taxpayer A's trust in the correctness of the transaction involving the maturing investments by Bank E's employee prevented Taxpayer A from depositing Amount B into an IRA within the 60-day rollover period since the distribution. The failure to deposit Amount B into an IRA within the 60-day period was solely because of the lack of information from Bank E and the failure to waive the 60-day requirement would be against equity or good conscience.

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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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into an 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, these amounts will be considered rollover contributions 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.

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.

If you wish to inquire about this ruling, please contact \_\_\_\_\_, at \_\_\_\_\_  
Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

*for* *Ada Perry*

\_\_\_\_\_, Manager  
Employee Plans Technical Group 4

Enclosures:  
Deleted copy of ruling letter  
Notice of Intention to Disclose