

200410027



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

Uniform Issue List: 408.03-00

DEC 9 2003

T. EP. RAITY

Legend:

Bank B =
Document C =
Account D =
Amount E =
Employee F =

Dear:

This is in response to a ruling request submitted by you on *****, **, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

You are ** years old and have serious hearing loss in both ears. You maintained an individual retirement account (IRA), with Bank B. On *****, you signed Document C believing that you were signing an authorization to reinvest money market funds already in your IRA. You were not wearing hearing aids when you signed Document C. You were confused by the explanation provided to you by Employee F. Because it was a stressful, embarrassing experience you did not realize you had authorized a total distribution of funds from your IRA into a savings account with Bank B. After the 60-day rollover period expired, you received a Form 1099-R concerning the distribution but you left it unopened with your other tax documents since you had applied for an extension to file your federal income tax forms for the year 2002. You did not discover the error until a customer service representative for Bank B informed you of the status of Account D in *****. At that time, aware that the 60-day rollover period had expired, you contacted Employee F who agreed that the distribution of Amount E from your IRA was due to her mistake.

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 E from your IRA because the failure to waive such requirement would be against equity or good conscience, and allow you to return Amount E to your IRA restoring the tax deferred status of Amount E.

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 or 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 or 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 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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.

Revenue Procedure 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 you presented indicates that you suffer from a serious hearing loss. You were not wearing hearing aids and were confused by a mistake or error on the part of Employee F of Bank B that resulted in the transaction not being carried out in accordance with your intent. These facts and circumstances indicate that you could not reasonably satisfy the requirement that Amount E be deposited in an IRA within 60 days of the distribution from your IRA, and the failure to waive the 60-day requirement would be against equity and good conscience.

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 E. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount E, in cash, into one or more IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, this 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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact _____
at _____

Sincerely yours,

Alan Pipkin
Manager, Technical Group 4
Employee Plans

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter