



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200421009

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Uniform Issue List: 408.03-00

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T.E.P.R.A.T4

Legend:

Taxpayer A =
Company B =
Company C =
Company D =
Amount E =
Fund F =
Fund G =
IRA X =

IRA Y =

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.

Taxpayer A maintained an individual retirement account, IRA X, with Company B. IRA X was invested in Fund F, a mutual fund managed by Company C. Taxpayer A also invested in Fund G, another fund managed by Company C that was not held in a tax deferred account. On *****, **, Company C sent a letter to the shareholders of Fund F and Fund G stating that the operation of these funds was no longer practical

and that Fund F and Fund G would be liquidated on *****, ****, and all shares redeemed at that time. Taxpayer A did not receive the letter from Company C, and was not aware of the upcoming liquidation of these funds. On *****, ****, Company C liquidated Fund F and Fund G and sent checks directly to Taxpayer A on *****, ****. As Company B was her IRA trustee, Taxpayer A was confused and did not know why Company C sent the proceeds of IRA X directly to her rather than sending such proceeds to Company B, custodian of IRA X.

Taxpayer A received no explanation from either Companies B or C of her options or the consequences of failing to rollover the IRA proceeds within 60 days. In fact, Taxpayer A received nothing that would have called her attention to the fact that she was receiving an involuntary distribution of IRA funds. Further, there was no income tax withholding that would have triggered an immediate question. When Taxpayer A received the two checks from the liquidation of Funds F and G, she deposited the checks into two taxable accounts. These monies remained untouched on deposit even after Taxpayer A received Form 1099-R in ***** showing she had received a distribution from IRA X, Amount E. Taxpayer A attempted to discover what had happened and, if a mistake had occurred, what, if anything, she could do to correct it. After being advised by her attorney that the 60-day period had elapsed and she should request a waiver of the 60-day period, Taxpayer A subsequently established a new IRA, IRA Y, with Company D in Amount E on *****. At all times beginning with the receipt of the IRA proceeds in ***** until the IRA rollover account was established in ***** 2003, the funds remained deposited in the two taxable accounts and were not used for personal expenses.

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 IRA X because the failure to waive such requirement would be against equity or good conscience, and allow you to deposit Amount E to IRA Y 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 presented by Taxpayer A indicates that there was an unexpected liquidation of the mutual fund in which her IRA assets were invested and a failure of her trustee and mutual fund to provide proper notification and information about the options available to Taxpayer A following the involuntary IRA distribution. Taxpayer A made no use of the funds (Amount E) distributed from IRA X other than to deposit such funds in two separate accounts that remained untouched until she was able to establish IRA Y and transfer Amount E to this new IRA. These facts and circumstances indicate that Taxpayer A could not reasonably satisfy the requirement that Amount E be deposited in an IRA within 60 days of the distribution from her 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. 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, Amount E deposited into IRA Y

on *****, 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 #

at

Sincerely yours,

Donzell Littlejohn
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter