



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200443038

JUL 26 2004

Uniform Issue List: 408-03-00

SE:T:EP:RA:TI

Legend:

Custodian A =

IRA B =

SEP IRA C =

Account D =

Amount E =

Amount F =

Dear :

This letter is in response to a request for a letter ruling dated June 17, 2004, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

You are 72 years old. You maintain IRA B, an individual retirement account ("IRA") under section 408(a) of the Internal Revenue Code ("Code") and SEP IRA C, a simplified employee pension IRA under section 408(k) with Custodian A. During        you wanted to change a portion of your investments in IRA B and SEP IRA C from stocks to money market funds. Using the internet, you attempted to execute transactions to convert stocks worth Amount E in IRA B and Amount F in SEP IRA C to such cash investments.

Upon review of your 2003 tax data, it was determined that Custodian A issued two 1099-R forms showing distributions of Amounts E and F. These amounts were inadvertently deposited in Account D, a regular investment account sponsored by Custodian A. Consequently, you failed to complete the rollover of Amounts E and F in Account D back to IRA B and SEP IRA C within the 60-day limit required by Code section 408(d). Amounts E and F have remained at all times in Account D.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amounts E and F because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) provides that section 408(d)(1) 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 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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).

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 Code 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.

You attempted to change your investment options from stock to money market cash using internet transactions. In the process, you inadvertently transferred Amounts E and F from IRA accounts to non-IRA accounts.

The mistake was not discovered until after the expiration of the 60-day rollover period. At all times, the transferred amounts have remained intact in Account D

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts E and F from your IRA and SEP IRA accounts with Custodian A. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. Provided all other requirements of section 408(d)(3), 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).

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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. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \_\_\_\_\_, SE:T:EP:RA:T1, I.D.  
at \_\_\_\_\_

Sincerely yours,

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

Copy of Notification Letter (Form 1155) to Authorized Representative

cc: