



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY **200449039**  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SEP - 8 2004

Uniform Issue List: 408.03-00

*SE.T.EP.PA.T3*

Legend:

Taxpayer A =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

Amount I =

IRA X =

Broker C =

Dear

This is in response to your letters dated November 6, 2003, February 6, 2004, April 5, 2004, May 20, 2004, and August 19, 2004, 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:

Taxpayer A withdrew Amount D from his traditional individual retirement account, IRA X, on \_\_\_\_\_ Taxpayer A believed that he had until \_\_\_\_\_ to return

Amount D, by means of a rollover contribution, into IRA X. However, the 60-day rollover period described in Code section 408(d)(3)(B) expired on

On Taxpayer A and agents of Broker C discussed what forms were necessary to accomplish Taxpayer A's rollover of Amounts E and F held by Broker C, which amounts would have replaced a significant portion of Amount D, into IRA X. After a series of transactions involving Taxpayer A's buying and selling securities, Taxpayer A was able to accumulate Amount H on . . . . . Additionally, on . . . . . after a series of contacts with Broker C, Taxpayer A was able to complete the form necessary to effectuate a transfer of Amount H, held in Taxpayer A's personal non-IRA account with Broker C, to IRA X as a rollover contribution.

In addition, in Taxpayer A also completed a form with Broker C to effectuate a transfer of Amount I into his IRA X. Amount I became available to Taxpayer A on . . . . . but Taxpayer A requested Broker C to make Amount I available on . . . . . which Taxpayer A believed was the last day on which he could accomplish his intended rollover into IRA X.

The transfer forms referenced above were Faxed by Taxpayer A to Broker C on . . . . . but were not received by Broker C prior to the end of its normal trading hours.

Amounts H and I total Amount E.

Furthermore, on Taxpayer A sent two checks, dated . . . . . and totaling Amount F, by overnight courier service to Broker C. Taxpayer A had previously provided Broker C with directions, via Fax, to deposit the checks as rollover contributions to Taxpayer A's IRA X. However, the courier service used by Taxpayer A did not have delivery service on either . . . . . or . . . . . As a result the two checks were not received by Broker C until . . . . .

On . . . . . after managers at Broker C reviewed the timing of Taxpayer A's transfer transactions and the availability of his funds, Broker C notified Taxpayer A that it could not accept Amounts E and F as rollover contributions citing the expiration of the 60-day rollover period found in the Code. Broker C then suggested that Taxpayer A contact the Internal Revenue Service (IRS) to obtain an extension of the 60-day rollover period. Taxpayer A contacted the IRS shortly thereafter.

Amounts E and F total Amount G.

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

With respect to your ruling request, 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)).

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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) 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 a misunderstanding on Taxpayer A's part of the 60 day rollover period. As a result of Taxpayer A's misunderstanding, his attempts to effectuate either rollover contributions or transfers of funds, totaling Amount G, into his IRA X were unable to be completed since Broker C did not receive either his transfer request or said funds on a timely basis. Furthermore, Taxpayer A's attempts to complete his rollover transactions were hindered because of difficulties he experienced with Broker C in completing the necessary forms, and because the courier service he used did not have weekend delivery service. Additionally, due to several transactions involving securities, Taxpayer A was not able to accumulate the necessary funds to effectuate his rollovers until [redacted] which was two days after the expiration of the 60-day rollover period.

Based on the above facts and circumstances, 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 G from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of issuance of the letter to contribute Amount G into an IRA which meets the requirements of Code section 408(a). Provided all requirements, except the 60 day requirement of Code section 408(d)(3)(A), of Code section 408(d)(3) are met with respect to such contribution of Amount G to an IRA, the contribution of Amount G distributed from IRA X to an IRA will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Pursuant to Code section 408(d)(3)(E), this letter ruling does not authorize the rollover or transfer into an IRA of amounts, if any, required to be distributed.

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.

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If you wish to inquire about this ruling, please contact I.D. #  
at Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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