



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List 408-03-00

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

NOV 18 2004

200506028

SE: T: EP: RA: T1

Legend:

IRA B

Bank M

Bank N

Amount 1

Amount 2

Amount 3

Account X

Account Y

Dear [REDACTED]:

This is in response to a ruling request dated March 24, 2004, as supplemented by a letter dated July 20, 2004, in which you requested 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 maintained IRA B, an individual retirement account ("IRA") under Code Section 408(a) with Bank M. The funds in IRA B were invested in a certificate of deposit ("CD") which was to mature on [REDACTED]. Bank M changed its name to Bank N. On [REDACTED], you approached a teller at Bank N and requested a rollover of IRA B into another IRA. The bank teller advised you that because you were over age 59½ you could not rollover IRA B to another IRA. You questioned this advice but were told the law had changed. Based on that

advice, you cashed in IRA B and deposited Amount 1 into Account X, a non-IRA savings account with Bank N. On [REDACTED] you withdrew Amount 1 from Account X and used Amount 2 to purchase a 2 year CD (Account Y) with Bank N. The difference between Amount 1 and Amount 2 (Amount 3) was the result of a rounding of Amount 1 prior to the purchase of the CD.

When you received a Form 1099-R, you contacted Bank N and were told the information the teller provided in [REDACTED] was incorrect and was advised to apply for a waiver of the 60-day rollover requirement.

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 Amount 1 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).

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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.

You attempted to rollover IRA B into another IRA. However, due to the erroneous advice by Bank N, you placed Amount 1 into a non-IRA account.

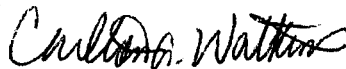
Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. Provided all other requirements of section 408(d)(3), 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).

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 have any questions, please contact [REDACTED] (Badge No. [REDACTED]) at [REDACTED]  
[REDACTED]

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437