



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200514023

JAN 10 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. TY

Legend:

Individual A =

IRA X =

Bank A =

Bank B =

Amount D =

Date W =

Date X =

Date Y =

Dear :

This letter is in response to a ruling request submitted by you dated , as supplemented by correspondence dated , in which you request 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:

Individual A maintained IRA X at Bank A. On Date W Individual A received a distribution of Amount D from IRA X. Individual A was advised by her financial advisor in connection with the distribution that she had 60 days from the date of the distribution to place Amount D in another account. Due to miscommunication between Individual A and her financial advisor, Individual A did not understand that Amount D had to be rolled into another IRA. As a result, within 60 days of Date W, instead of rolling over Amount D into another IRA, Individual A transferred Amount D into a [REDACTED] with Bank B on Date X and assumed that she had completed a timely rollover until the Internal Revenue Service requested additional information on Date Y about the income Individual A earned in [REDACTED].

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 D, because the failure to waive such requirement would be against equity or good conscience.

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 –

- (1) 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,
- (2) 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)).

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 one-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, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, 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 demonstrates that you attempted to effect a timely rollover. However, due to a miscommunication between you and your financial advisor regarding the requirements for a proper rollover, you were unable to satisfy the requirement to redeposit Amount D into an IRA within 60-days of the distribution to you.

Therefore, pursuant to section 408(c)(3)(I) of the Code, we waive the 60-day rollover requirement with respect to Amount D. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. If all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to Amount D, such 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 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

Sincerely yours,



Manager  
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose