

MAR 01 2005

Uniform Issue List: 408.03-00

Legend:

Bank M =

IRA X =

Amount A =

Amount B =

Amount C =

Amount D =

Dear [REDACTED] :

This is in response to correspondence dated November 13, 2004, as supplemented by correspondence dated January 13, 2005 and a telephone conversation with a representative of this office on January 24, 2005, in which you requested 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:

You maintained an Individual Retirement Arrangement (IRA) with Bank M which was funded with a certificate of deposit. When the certificate of deposit matured, you requested a distribution from your IRA. On July 27, 2004 you received a total distribution from IRA X of Amount A. Your intent was to pay certain car and medical expenses and to return the remainder of the distribution to an IRA. You paid Amount B for new tires and Amount C for transmission repairs including new belts. You paid Amount D for prescription drugs, lab fees, and other medical expenses. On October 18, 2004, you went to Bank M to return the remainder of the distribution to IRA X (a large percentage of the original distribution, Amount A). At that time, you were informed that the 60-day rollover requirement expired on September 25, 2004.

You are 76 years old and have been diagnosed with a mental condition which becomes worse when you are ill, which was the case after the certificate of deposit expired. During the 60-day

rollover period you went to a doctor and were diagnosed with low thyroid levels which aggravated your mental condition. In addition, you have total responsibility for the care of your brain-injured daughter, who had stopped taking her medications during this 60-day period.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount A.

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 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)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where 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) 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 your medical condition and the exhaustion which necessitated medical appointments and treatment, as well as the medical condition of

your daughter and your role in her health care, prevented you from timely placing Amount A, less Amounts B, C, and D, into a Rollover IRA. Although it was your intent to roll over Amount A, less Amounts B, C, and D, back into IRA X, due to your and your daughter's health issues you did not attempt to do this until after the 60-day rollover period had expired. Shortly after learning of your mistake, you requested this ruling from the Service.

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 A (less Amounts B, C, and D, and amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A (less Amounts B, C, and D, and amounts described below) into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A (less Amounts B, C, and D, and amounts described below) will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6).

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 expresses no opinion as to whether IRA X described herein satisfied the requirements of section 408 of the Code.

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.

If you wish to inquire about this ruling, please contact _____, I.D. _____, at _____.
Please address all correspondence to _____.

Sincerely yours,



_____, Manager
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose