

200540022

INTERNAL REVENUE SERVICE

JUL 13 2005

SE: T. EP. RA. T4

Uniform Issue List: 408.03-00

Legend:

Individual A =
Amount B =
Date C =
Date D =
State E =
IRA X =

Plan Y =

Dear

This is in response to your ruling request dated *****, for a waiver of the 60-day rollover requirement 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:

Individual A was a teacher formerly employed by State E and a participant in Plan Y. Individual A contacted State E regarding the purchase of prior service credit under Plan Y. Individual A was informed by State E that Plan Y is a qualified section 401(a) defined benefit plan maintained by State E.

Individual A was also informed by State E that she could purchase prior service credits in a variety of ways, including, among others, a qualified rollover distribution from a traditional IRA. Individual A was advised by a State E representative that she did not have to make her contribution to Plan Y until her next contract date, which was late in 2003. Individual A was unaware that a distribution from an IRA must be rolled over within a 60-day period. On Date C Individual A took a distribution of Amount B from IRA X. Amount B was deposited in a checking account and not used until Date D when Amount B was rolled over into Plan Y. At that time the 60-day rollover period had expired.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B.

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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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), 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 demonstrates that you relied on the advice of a State E representative that payment for the purchase of prior service credit was not required until late 2003. You believed that this advice also applied to the rollover from IRA X, which resulted in Amount B being rolled over after the expiration of the 60-day rollover period.

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 B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount B 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 hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

200540022

If you have any questions regarding this ruling, you may contact *****

Sincerely yours,

for *Adia Perry*
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of this letter