

200543065



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

AUG 04 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:TI

Legend:

Taxpayer =

Bank A =

Bank B =

Bank C =

IRA D =

IRA Annuity J =

Account E =

Account K =

Amount F =

Company G =

Individual H =

Individual I =

Dear :

This letter is in response to a request for a letter ruling dated March 8, 2005, as supplemented by additional information dated April 11, 2005, April 22, 2005, May 9, 2005, June 2, 2005, June 9, 2005, and July 6, 2005, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code") regarding a distribution from your individual retirement annuity (IRA Annuity J) under section 408(b).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer established IRA D, an individual retirement account under Code section 408(a), with Bank A and relied upon Individual H, an officer of Bank A, for investment guidance. On February 13, [REDACTED] Individual H convinced the Taxpayer to convert his low yielding certificate of deposit in IRA D to a higher yielding IRA annuity, under Code section 408(b), purchased from Company G. The Taxpayer did not fully understand Individual H's advice but agreed to purchase IRA Annuity J. On February 13, [REDACTED] the Taxpayer signed an application for an IRA annuity with Company G and Amount F was immediately transferred to IRA Annuity J from IRA D. On February 15, just two days later, Individual I, a friend of the Taxpayer for 40 years, read the terms of the annuity contract and determined it was not a proper investment due to the Taxpayer's age. Shortly thereafter, IRA Annuity J was cancelled by Company G at the Taxpayer's request, and Amount F was returned to the Taxpayer. Amount F was deposited by the Taxpayer on March 18, [REDACTED] in Account E with Bank B. For unknown reasons, on March 26, [REDACTED] the Taxpayer withdrew the entire balance in Account E and transferred the funds to another account (Account K) with Bank B. On October 15, [REDACTED] he transferred the funds in Account K to an account with Bank C. Neither Accounts E or K in Bank B nor the account with Bank C is an IRA under Code section 408(a). Taxpayer was issued a Form 1099-R by Company G showing Amount F as a taxable distribution for the [REDACTED] tax year.

The Taxpayer was age 69 at the time of the above-described transaction. Not being able to understand complex financial and tax matters, the Taxpayer has had to rely on responsible third parties for advice. However, neither the financial officer at Bank A, Individual H, or his friend, Individual I, explained that the distribution of Amount F by Company G had to be rolled over or invested in another IRA account or IRA annuity within 60 days of the distribution. Amount F is still in the account with Bank C where it remains untouched today.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount F upon cancellation of IRA Annuity J 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).

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 Code 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 you demonstrates that the rollover of funds (Amount F) from IRA Annuity J to another IRA was not made within 60 days. Due to your inability to understand financial and tax matters, you rely upon the advice of third parties to make investment decisions. Individual H advised you to use the proceeds from IRA D to purchase IRA Annuity J, and Individual I advised you to cancel IRA Annuity J. Individual H and Individual I failed to notify you that an amount withdrawn from an IRA account or IRA annuity would lose its tax deferred status if not rolled over or invested in another IRA account or IRA annuity within 60 days of its distribution. Under these circumstances, you were unable to satisfy the requirement that the funds (Amount F) be deposited in an IRA account or IRA annuity within 60 days of their distribution from IRA Annuity J with Company G.

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 F from IRA Annuity J with Company G. You are granted a period of 60 days from the date of this ruling letter to contribute Amount F into another individual retirement account or annuity described in section 408. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount F will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact [REDACTED], SE:T:EP:RA:T1, I.D. # [REDACTED] at [REDACTED]

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc:

