

## INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

NOV 10 2005

SE: T: EP: RA: T3

**Legend:**

IRA X =

Amount A =

Bank B =

Amount C =

Credit Union D =

Amount E =

Company F =

Dear [REDACTED]

This is in response to your request dated May 13, 2005, as supplemented by correspondence dated August 4, August 25, October 3, and October 11, 2005, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). This correspondence was also supplemented by a telephone conference held on October 11, 2005.

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

You maintain an Individual Retirement Arrangement (IRA), IRA X, with Company F. You are 71 years old and are the caregiver for your aunt, who lives in your household. You and your aunt maintain an account at Credit Union D which is held in joint names.

On June 29, [REDACTED], your aunt withdrew Amount E from Credit Union D. Part of this withdrawal had been invested in a certificate of deposit and the remainder in a savings account. Your intent was to replace the funds temporarily since you would incur an early withdrawal penalty on the certificate of deposit, which matured in August 2004, and lose interest on the savings account. Personnel at Credit Union D advised you to replace the withdrawn funds.

To accomplish this, you met with your Company F financial advisor, who has been your financial advisor since 1985. You explained to him that your aunt withdrew Amount E

from Credit Union D and that you had been told by Credit Union D that you needed to replace the funds by July 1, [REDACTED] in order to avoid a premature withdrawal penalty. Your financial advisor told you that he would get the money for you. In addition to IRA X, you also have two annuities maintained by Company F. Your financial advisor filled out paperwork, which you signed, but did not give you a copy of the paperwork. You were not aware of what you were signing and signed the papers without reading them based on your long relationship with your financial advisor. The financial advisor did not explain the paperwork which you signed and did not inform you that the papers would effect a withdrawal of funds from IRA X. In addition, you did not receive any written notification from Company F that the source of these funds was IRA X. The funds in the annuities maintained by Company F were immediately available and could have been withdrawn with reduced tax consequences to you since you had bases in these annuities. Your financial advisor did not discuss any of these taxability issues or the 60-day rollover requirement with you.

On June 29, 2004, Amount A was distributed from IRA X. Amount A was transferred by wire to a non-IRA account at Bank B on June 30, [REDACTED]. On July 1, [REDACTED] you wrote two checks totaling Amount C from your account at Bank B and deposited the checks in the two separate accounts at Credit Union D.

When you went to have your tax returns prepared for [REDACTED] you discovered that you had received a taxable distribution from IRA X. Until you went to have your tax returns prepared, you were not aware that a distribution from IRA X had occurred. You had relied on your financial advisor, with whom you had a long-standing financial relationship, to properly handle your assets and to inform you of any taxability issues concerning these assets. Amount A remains in Credit Union D and no amounts have been withdrawn or used for any purposes.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount A, contained in section 408(d)(3) of the Code in this instance.

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6). 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 and the documentation you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by your financial advisor, who had you request a distribution from IRA X without your knowledge or understanding. In addition, he did not discuss with you other distribution options available to you from your annuities, the taxability of any distributions, or the rules regarding rollovers including 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 A (less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A (less 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 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) with respect to the 2004 and 2005 calendar years.

Page 4

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 the IRA 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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact . Please address all correspondence to .

Sincerely yours,

, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose