

INTERNAL REVENUE SERVICE

200608033

NOV 30 2005

Uniform Issue List: 408.00-00

SET. EP. RA. T3

Legend:

Taxpayer A =  
Taxpayer B =  
Amount D =  
Amount E =  
Investment Firm F =  
Broker G =

Dear [REDACTED]

This is in response to your letters dated November 15, 2004, March 22, 2005, and August 16, 2005, in which your authorized representative 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:

Taxpayers A and B, both under age 70, represent that they received a distribution from their respective individual retirement ("IRA") accounts totaling Amount D. Taxpayers A and B assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Investment Firm F which led to Amount D and Amount E being placed into a non-IRA account.

Taxpayer A and Taxpayer B, a married couple filing joint Federal income tax returns, requested that Broker G close their respective IRA accounts and roll over the funds into other IRA accounts. The request was made in early February 2003. The funds totaling Amount D for Taxpayer A and Amount E for Taxpayer B were distributed in check form, and received by Taxpayers A and B during February, 2003. On February 19, 2003,

Taxpayers A and B met with a financial representative of Investment Firm F and signed forms which contained written instructions for Investment Firm F to roll over the proceeds of the IRA distributions into other IRAs. On March 1, 2004, during the preparation of their tax returns, Taxpayers A and B discovered that their intended rollovers were not accomplished by Investment Firm F.

Investment Firm F wrote a letter on March 24, 2004, which was attached to your ruling request, which, in pertinent part, admitted that the failure to roll over the IRA distributions into other IRAs was a Investment Firm F error. On April 6, 2004, Investment Firm F refused to complete the rollover.

Amount D and Amount E currently remain in non-IRA accounts and have not been used for any purpose(s).

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts D and E because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your ruling request, 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 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.

Rev. Proc. 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), 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 provided on behalf of Taxpayers A and B demonstrates a failure to timely accomplish rollovers of Amounts D and E because of their reliance on the advice, competence and expertise of Investment Firm F which firm failed to follow Taxpayer A and Taxpayer B's written instructions to roll over Amounts D and E into other IRAs.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, or any portion thereof, to an IRA. Provided all other requirements of section 408(d) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 408(d) of the Code.

Additionally, Taxpayer B is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E, or any portion thereof, to an IRA. Provided all other requirements of section 408(d) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 408(d) 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 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 has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact [REDACTED] I.D. # [REDACTED] at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose