



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

200609023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

DEC - 7 2005

SE.T. EP. RA. T3

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Amount A =

Company A =

Company B =

Company C =

Dear [REDACTED]

This is in response to your request dated , as supplemented by correspondence dated , and , 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").

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

Taxpayer A, who has not attained age 70 1/2, represents that he received a distribution from an individual retirement account maintained in his name with Company A, IRA X, totaling Amount A on or about , 2003. On or about , 2003, Taxpayer A placed Amount A in an account with Company B while he reviewed a Company B IRA annuity contract to determine if he should place Amount A in such an

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annuity. On or about _____, 2003, Taxpayer A decided not to do so because of the high fee involved in purchasing such a contract. Shortly thereafter, on or about _____, 2003, Company B cancelled Taxpayer A's account, and a few days later, on or about _____, 2003, remitted, by means of a check, Amount A to Taxpayer A. Said check was not cashed by Taxpayer A. During _____, 2003, Company B reissued its check to Taxpayer A. On or about _____, 2004, Taxpayer A contributed Amount A into an IRA, IRA Y, set up in his name with Company C.

Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due (1) to his belief that as long as he did not cash the check which he received from Company B thereby not using his IRA funds he retained the ability to roll over Amount A into another IRA, and (2) to his concern over the failing health, and eventual death, of a close friend, Taxpayer B. As noted above, Amount A was eventually contributed into IRA Y where it remained as of the date of this ruling request.

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 1-year period ending on the day of such receipt such

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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 presented by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by his failure to understand the rollover rules and by his concern over the failing health of a close companion. However, the Service notes that Taxpayer A did not contact a tax professional to determine if his understanding of the rollover rules was correct and what effect his decision to cancel his Company B annuity contract after the expiration of the 60-day period applicable to the distribution he received from IRA X would have on his ability to accomplish a rollover of Amount A. Furthermore, the Service also notes that the ability to deposit Amount A into a rollover IRA within the requisite 60-day period was at all times within the control of Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Thus, the Service declines to treat Taxpayer A's contribution of Amount A into IRA Y on or about Date 6, 2004, as a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

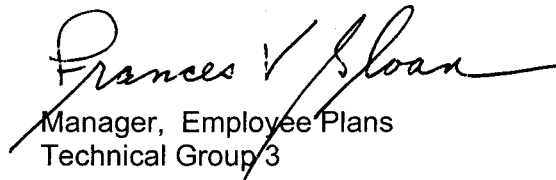
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

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If you wish to inquire about this ruling, please contact [REDACTED], Esquire
[REDACTED] at [REDACTED]. Please address all correspondence to
SE:T:EP:RA:T:3.

Sincerely yours,


Manager, Employee Plans
Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose