

Department of the Treasury
Internal Revenue Service
Washington, D.C. 20224

Uniform Issue List: 408.03-00

200618029

REP. RA. T3

FEB 10 2006

Legend:

Company M =

IRA X =

Amount A =

Amount B =

Company N =

Dear :

This is in response to correspondence dated August 16, 2005, as supplemented by correspondence dated February 1, 2006, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

Under penalty of perjury, you have submitted the following facts and representations in support of the ruling requested:

You are 74 years old. You maintained an Individual Retirement Arrangement (IRA), IRA X, with Company M. On August 2, 2002, you terminated IRA X and received a distribution of Amount A. On August 5, 2002, you met with a financial consultant from Company N to roll over Amount B, an amount which was less than Amount A, into an IRA to be established with Company N. You are certain that you requested the financial consultant to open an IRA with Amount B. On August 9, 2002, an account was established with Company N and Amount B was deposited into that account.

You filed your Federal Income Tax Return indicating that you had a rollover of Amount B from IRA X to an IRA with Company N. In correspondence dated May 17, 2004, you received information from the Internal Revenue Service proposing changes to your Federal tax return. That correspondence stated that you received a taxable distribution from an IRA of Amount B which was not reported on your Federal tax return.

On April 9, 2005, your authorized representative met with the financial consultant from Company N. The financial consultant informed your representative that, contrary to your intent, Amount B was not rolled over into an IRA and that he did not recall the conversation that he had with you regarding a rollover of Amount B to an IRA.

You assert that your failure to accomplish a rollover of Amount B within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by the financial consultant employed by Company N, and was caused by a miscommunication or misunderstanding which led to Amount B being placed into a non-IRA account.

Amount B remains in the non-IRA account with Company N and no amounts have been withdrawn or used for any purposes.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement 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)(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 presented demonstrates your intent to roll over Amount B, a portion of the IRA X distribution, into another IRA established and maintained at Company N. On August 5, 2002, you met with a financial consultant from Company N and you are certain that, at that meeting, you requested that he establish a Company N IRA and roll over Amount B into that IRA. Instead, because of a miscommunication or misunderstanding of your intent to roll over Amount B into an IRA, the financial consultant erroneously deposited Amount B into a non-IRA account. When you received correspondence from the Service, you discovered that Amount B had not been properly rolled over into an IRA. Since the date that Amount B has been held in the non-IRA account with Company N, no amounts have been withdrawn or used for any purposes.

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. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount B, 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 B, less amounts described below, 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).

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.

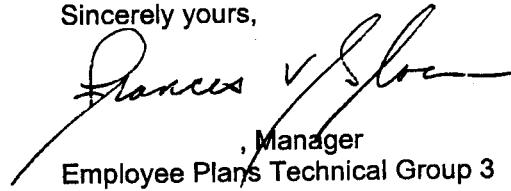
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. Should you have any concerns regarding this letter, please contact _____ at _____ (not a toll-free number).

Sincerely yours,


_____, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose