

Department of the Treasury
Internal Revenue Service

200852032

Uniform Issue List: 408.03-00

SEP 30 2008

Legend:

Company M =

IRA X =

Company A =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

State B =

Dear :

This is in response to your request dated July 7, 2008, as supplemented by correspondence dated August 7, 2008 and a telephone conversation on August 12, 2008, 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:

You maintain several retirement and investment accounts with Company M. One of these accounts is an Individual Retirement Annuity (IRA), IRA X. You assert that you received a distribution from IRA X of Amount 4 and that your failure to accomplish a

rollover of Amount 4 was due to the error of your financial advisor in providing incorrect advice and erroneously causing the distribution of Amount 4.

You had a car loan with Company A. On July 30, , you wrote a check for Amount 1 to pay off the car loan. You wrote this check from an account which you maintained with Company M. You thought this account was a money market account with a balance of approximately Amount 2, which is more than Amount 1. Soon after you sent this check, you were informed by Company A that there were insufficient funds in the account to cover the amount of the check.

You called your investment representative at Company M who advises you on your retirement and investment accounts held by Company M. He informed you that you would have to transfer funds into the account which you were using to write the check before you could pay off the car loan balance.

A few weeks later, another representative of Company M presented you with two blank forms which you signed. You were told that your signatures were necessary to transfer the funds. Your investment representative transferred funds from two accounts which were maintained with Company M. You never discussed the source of these funds with either Company M representative. Since you have several accounts with Company M, you assumed that your investment representative was going to sell some of the stock maintained with one of these accounts.

On September 7, , you received a check in the mail for Amount 3, which was an amount in excess of the amount which you needed to pay off your car loan. You immediately deposited this check into your personal checking account and wrote another check to pay off the balance of your car loan.

You received a Quarterly Policy Summary from Company M, dated October 2, , which advised you that Amount 4 was distributed from IRA X. You called your Company M investment advisor and asked him why he had you take distributions from IRA X when other nontaxable funds were available to pay off the car loan. He reassured you that there was sufficient withholding to cover any income taxes, and advised you to withdraw funds from IRA X and transfer them to your brokerage account with Company M. Similarly, in late November , you met with your Company M investment advisor who informed you that he would be withdrawing funds from IRA X every year and transferring these distributions into your brokerage account with Company M. You relied on his expertise in this instance since this was his professional advice. In addition, he told you that you would probably be refunded most of the withheld amounts from the IRA X distribution when you filed your income tax returns. At a later date, you discovered that your investment advisor had provided you with erroneous advice and did not consider your liability for any premature distribution penalties since he thought you were 60 years old; you are 57 years old.

On December 5, , you mailed the excess of the IRA X distribution which you did not need to pay off the car loan, plus additional personal funds, to your Company M investment representative. On December 11, , your Company M investment representative invested these funds in stock.

In January you received two 1099R forms from Company M, one of which concerned the distribution from IRA X. The Form 1099R for IRA X indicated that the taxable amount of the distribution was Amount 4, Amount 5 was the Federal income tax withheld, and Amount 6 was the State B tax withheld. When you went to your tax preparer with these documents, you learned the amount of your Federal income tax liability for and were concerned about the additional amount of tax due to the distribution from IRA X. You called your Company M investment representative and had a number of discussions with him about your concerns. During one discussion, he stated that he had made a mistake in distributing the IRA X funds and did not want you to file a formal complaint against him or Company M. He told you that he had been advised to file an Errors and Omissions claim with his malpractice company, which would probably pay for your taxes.

On February 28, , your Company M investment representative wrote a letter to another representative of Company M, submitting a formal written request for any form of reversal or retraction of the taxable event resulting from the distribution of the funds from IRA X. In this letter, he took responsibility for improper oversight of the source of the distribution, acknowledging that he failed to do his due diligence on the taxable impact of the withdrawal. On March 4, , you also wrote to the other Company M representative, stating that you had no knowledge that the source of the distribution was IRA X.

Because of your concerns, you also discussed this IRA X distribution, and the actions of your Company M investment representative, with the State B Insurance Commissioner. You have also consulted with an attorney and another financial professional not employed by Company M concerning this matter.

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 4, 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 other non-IRA accounts or the taxability of the IRA X distribution.

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 4. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount 4 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 4 will be considered a 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 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.

If you wish to inquire about this ruling, please contact _____, I.D. # _____, at _____ (not a toll-free number). Please address all correspondence to _____.

Sincerely yours,


_____, Manager
Employee Plans Technical Group

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose