

Department of the Treasury  
Internal Revenue Service

200904031

OCT 30 2008

Uniform Issue List: 408.03-00

SEP: T: EP: RA: T3

**Legend:**

IRA X =

IRA Y =

IRA Z =

Amount A =

Amount B =

Amount C =

Dear :

This is in response to your request dated June 4, 2008, as supplemented by correspondence dated July 31 and August 19, 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 had three Individual Retirement Arrangements (IRAs), IRA X, IRA Y, and IRA Z. IRA X was a Simplified Employee Pension IRA (SEP-IRA), and IRAs Y and Z were Roth Conversion IRAs (Roth IRAs).

In 2004, you requested and received distributions from IRAs X, Y, and Z. You received Amount A from IRA X, Amount B from IRA Y, and Amount C from IRA Z. You took these distributions because you were concerned about identity theft. You thought that distributions from your IRAs would protect your savings.

You would like to roll over the distributions of Amounts A, B, and C into eligible IRAs.

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, Amount B, and Amount C contained in section 408(d)(3) of the Code in this instance.

Section 408(a) of the Code provides the rules concerning individual retirement accounts and section 408(b) provides the rules concerning individual retirement annuities, two types of IRAs.

Section 408(k)(1) provides that, in general, the term "simplified employee pension" means an individual retirement account or individual retirement annuity.

Section 408A(a) of the Code provides that, in general, a Roth IRA shall be treated in the same manner as an individual retirement plan.

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 60<sup>th</sup> 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 60<sup>th</sup> 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)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) 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.

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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.

Based on the information you have presented and the documentation you have submitted, the distributions of Amount A, Amount B, and Amount C, from their respective IRAs, was due to your concerns about identity theft. You have made no attempts to roll over Amounts A, B, and C since their distribution.

Therefore, the Internal Revenue Service does not waive the 60-day rollover requirement with respect to the distribution of Amount A, Amount B, and Amount C contained in section 408(d)(3) of the Code in this instance.

In addition, please note that pursuant to section 72(t) of the Code, if an individual is under age 59 ½ on the date of a distribution from an IRA, the individual must pay a ten percent additional tax on the distribution. The ten percent additional tax applies to the part of the distribution that is includible in gross income.

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 IRAs described herein satisfied the requirements of section 408 or 408A 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 \_\_\_\_\_.  
Please address all correspondence to SE:T:EP:RA:T .

Sincerely yours,



\_\_\_\_\_, Manager  
Employee Plans Technical Group

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