



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200905038

*Uniform Issue List: 408.03-00*

NOV 7 2008

SE: T: EP: RA: T3

**Legend:**

Individual A =

Company M =

IRA X =

Amount 1 =

Bank B =

Amount 2 =

Dear :

This is in response to correspondence dated June 16, 2008, as supplemented by correspondence dated July 28 and August 12, 2008, 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).

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

You are 79 years old. You were married to Individual A for over 42 years. Individual A died on December 16, 2007.

After the death of Individual A, you found paperwork indicating that Individual A had an annuity which was administered by Company M. You were the beneficiary of this annuity. You called Company M and spoke with a Company M representative who told you that you would be sent forms to complete in order to receive a check for the balance in the annuity. You completed and returned these forms, and received a check for Amount 1 and a statement entitled Explanation of Your Benefits. The check was dated

February 5, 2008, and you received the check on February 20, 2008. On February 20, 2008, you deposited Amount 1 into a personal account in Bank B.

There was no information contained in the Explanation of Your Benefits statement that indicated the source of the payment was an Individual Retirement Annuity (IRA), only that the source of the funds was an annuity. The statement provided that Amount 2 was the taxable amount of the payment and the amount of the annuity. It also provided that the difference between Amount 1 and Amount 2 was "claim interest."

On May 27, 2008, you met with a financial advisor and showed him information concerning Individual A's annuity with Company M. The financial advisor informed you that the annuity was an IRA, IRA X, and discussed a rollover of the distribution from IRA X. This was the first time that a rollover was discussed with you. You were not aware that the annuity was an IRA or that a rollover was available concerning the distribution from IRA X.

Since the date you deposited the IRA X distribution of Amount 1 into your account at Bank B, you have not withdrawn or used Amount 1 for any purposes.

It has been represented that there have been no rollovers in the last 12 months from or to IRA X.

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 2, 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 and documentation which you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by the failure of Company M to provide you with sufficient information regarding the distribution. Until you spoke with a financial advisor on May 27, 2008, you were not aware that the distribution from the annuity was from an IRA, or that you had the ability to roll over the IRA X payment. When you discovered that the distribution was from an IRA, the 60-day rollover period had expired.

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 2 (less amounts described below) from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount 2 (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 contribution, Amount 2 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).

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 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.

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