



**201218026**

Dear xxxxx:xx

This letter is in response to your letter dated xxxxxxx, as supplemented by correspondence dated xxxxxxxxxx, xxxxxxxxxx, and xxxxxxx, submitted on your behalf by your authorized representative, 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 your request.

Taxpayer A represents that on Date 1, she received a distribution from IRA X totaling Amount B with the intent to rollover the distribution into another IRA within the 60-day period. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error committed by Bank C.

Taxpayer A, age , had IRA X in a Certificate of Deposit that matured on Date 1. On Date 1, Taxpayer A received a distribution from IRA X of Amount B. After receiving the distribution check from Bank B, Taxpayer A, on the same date, went to Bank C to deposit Amount B into a rollover IRA CD with Bank C.

Taxpayer A asserts that she specifically instructed Bank C's personnel that the funds be deposited into a rollover IRA CD. Taxpayer A further asserts that she was assured by Bank C's personnel that the funds were deposited in an IRA CD. However, contrary to Taxpayer A's instructions, Bank C personnel opened a non-IRA account.

Taxpayer A did not discover the error until she met with her accountant to prepare her 20 taxes. Taxpayer A immediately contacted Bank C to discuss corrective action.

Documentation from Bank C acknowledges that Bank C did not set up an IRA Certificate of Deposit according to Taxpayer A's instructions.

On Date 2 Taxpayer A withdrew the funds from the non-IRA account with Bank C and opened IRA Y, a rollover IRA CD in the amount of Amount D with Bank D. Amount D has not been used for any other purpose.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to Amount D.

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 received 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 included 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)(E) of the Code provides that the rollover provisions of section 408(d)(3) 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 sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur

**201218026**

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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount D was due to an error committed by Bank C.

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 D. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met, the contribution of Amount D to IRA Y will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

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

**201218026**

If you have any questions concerning this ruling, please contact xxxxxxxxxxxx,  
SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,

*for* *Ada Perry*  
Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice 437

Cc: