

INTERNAL REVENUE SERVICE

200429015

Uniform Issue List: 408.03-00

APR 22 2004

SE T. EP. RA. TY

Legend:

Taxpayer A=

Amount B=

Amount C=

IRA D=

IRA E=

Bank F=

Dear _____ :

This is in response to your request dated _____, supplemented by your letter dated _____, for 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:

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Taxpayer A is the beneficiary of IRAs D and E established by Taxpayer A's late husband in Bank F. Taxpayer A went to Bank F with the sole purpose of changing IRAs D and E to her own name after her husband died unexpectedly. Taxpayer A intended to use Amounts B and C to establish an IRA account under her own name within the 60 day period allowed by the Internal Revenue Code (the Code) to avoid any adverse tax consequences.

When Taxpayer A went to Bank F to do a rollover of her deceased spouse's IRAs, Taxpayer A states that while in Bank F, she was informed by Bank F personnel that a rollover was not a possibility under the circumstances. Taxpayer A states that she was not given the correct guidance on her options and, instead, she received Amounts B and C as a cash distribution which she deposited into her savings account and has been there, untouched, ever since. When Taxpayer A discovered that Bank F personnel had not given her the correct options involving Amounts B and C, the 60 day rollover period had expired.

Taxpayer A proposes to redeposit Amounts B and C to establish her own IRA account which is what she would have done if she had received the correct financial advice from the third party professionals at Bank F.

Taxpayer A represents that no other amount was distributed from IRAs D and E within the one year period since the original distribution.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts B and C because the failure to waive such requirement would be against equity or good conscience.

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 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)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

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 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.

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, 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 by Taxpayer A demonstrates that the delay was caused by bad advice provided by the personnel of Bank F and was beyond her control and prevented Taxpayer A from satisfying the requirement that Amounts B and C be deposited to establish her own IRA within 60 days since the 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 Amounts B and C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to establish her own IRA account with Amounts B and C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to

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such contributions, these amounts will be considered rollover contributions 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 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:T4.

Sincerely yours,


For Donzell Littlejohn, Manager
Employee Plans Technical Group 4

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