

INTERNAL REVENUE SERVICE

AUG 23 2005

200546046

Uniform Issue List: 408.03-00

SE: T. EP. RA. T3

Taxpayer A =
IRA X =
Financial Firm F =
Amount D =

Dear [REDACTED]:

This is in response to your December 15, 2004, April 20, 2004, and July 11, 2005, letters, 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 the ruling requested:

On May 26, 2004, Taxpayer A received a distribution of Amount D from his Individual Retirement Account, IRA X, to purchase a home. It later became clear that Taxpayer A would not be purchasing the home and Taxpayer A returned the Amount D check, uncashed, by way of a letter addressed to Financial Firm F dated July 25, 2004. On August 13, 2004, Financial Firm F wrote Taxpayer A advising him that it had received his check on August 6, 2005, that it would not reinvest Amount D in IRA X and that it would not cancel the May 26, 2004, distribution. Financial Firm F instead processed the transaction as a taxable transaction.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6).

Section 408(d)(3)(l) 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)(l) 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)(l), 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 on behalf of Taxpayer A indicates that Taxpayer A received Amount D by means of a check dated May 26, 2004, and returned Amount D on July 25, 2004, which was exactly 60 days after May 26, 2004, and within the 60 day rollover period measured from the date of his receipt of the check. Under the circumstances, the Service concludes that Taxpayer A acted reasonably in returning the Amount D check on July 25, 2004, and in believing it would be delivered in sufficient time to be rolled over timely into IRA X.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact [REDACTED]
I.D. # [REDACTED] at [REDACTED] Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

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