

INTERNAL REVENUE SERVICE

200405013

NOV 5 2003

T: EP: PA: W/C

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Amount B=

IRA C=

IRA D=

Employer E =

Plan E =

Dear Taxpayer A:

This is in response to your letter dated March 29, 2003, 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 are a _____ 2001. Before you were _____, you were employed by Employer E and participated in its 401(k) plan. While you were on _____ in a _____, the value of your Plan E account dropped below the required minimum of \$5,000 due to a severe decline in the value of Employer E stock. Plan E's administrator mailed a distribution check for Amount B to your base in the U.S. in November 2002. You learned about this

distribution on December 13, 2002, when you returned to your base in the U.S. The letter from the plan administrator did not explain the cash out provision of the plan to you nor why you were paid an involuntary distribution. You deposited Amount B in a savings account until you could determine what had happened. On December 23, 2002, you were reassigned to another base and traveled extensively in connection with your military duties. Several months passed before you had an opportunity to consult with the base legal officer about Amount B. On March 24, 2003, you deposited Amount B in IRA D and learned that the 60-day period provided in the Internal Revenue Code (the Code) for a tax free rollover had expired.

You state that no other amount was distributed from IRA C 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 period with respect to the deposit of Amount B in IRA D 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 you presented demonstrates that you and lack of information provided by the plan administrator prevented your from depositing Amount B be deposited in IRA C within 60 days of the distribution. The failure to waive the 60-day requirement would be against equity or good conscience.

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 B. If all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to the deposit of Amount B in IRA D, this amount is considered a tax free rollover contribution 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.

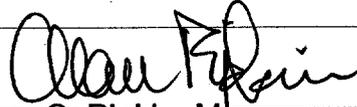
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact _____, at _____
. Please address all correspondence to _____.

Sincerely yours,



Alan C. Pipkin, Manager
Employee Plans Technical Group 4

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

Cc: