

200424010



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 16 2004

Uniform Issue List: 408.03-00

Legend:

Custodian A =

Bank B =

Amount D =

Amount E =

Amount F =

Amount G =

Dear

This letter is in response to a request for a letter ruling dated October 24,2003, a5 supplemented by additional information dated November 20,2003, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

You are years old. On July 7, , funds totaling Amount D were distributed from a traditional individual retirement account ("IRA") under Code section 408(a), maintained with Custodian A, and deposited in a non retirement account with Bank B. Funds totaling Amount E were used for personal expenses. Included in Amount E is Amount F which is your required minimum distribution under section 401(a)(9) for taxable year . With the remaining funds, you purchased two cashier checks (Amount G) and placed them in a safety deposit box at Bank B. Due to some stress and confusion, you were unable to understand the rollover requirements for this transaction. As a result, you failed to complete the rollover of Amount G within the 60-day limit contained in section 408(d).

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount G from Custodian A 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 you demonstrates that the rollover of funds from your IRA to another IRA was not made within 60 days. Some of the funds were taken out of the IRA as a required minimum distribution under Code section 401(a)(9). Another part of the IRA funds was used for personal expenses. Due to some confusion, you were unable to understand the rollover rules of section 408(d). Under these circumstances, you could not reasonably satisfy the requirement that the funds not used for personal expenses or representing a required minimum distribution under section 401(a)(9) be deposited in an IRA within 60 days of the distribution from Custodian A.

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 G in your IRA account with Custodian A. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover of Amount G to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount G will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

200424010

4

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
SE:T:EP:RA:T1, , at

Sincerely yours,

Carlton Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: