

200428084



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 13 2004

Uniform Issue List: 408.03-00

Legend:

Account A =
Amount B =
Amount C =
Amount D =
Amount E =
Amount F =
Amount G =
Bank H =

Dear

This is in response to a request submitted by letter dated November 18,2003, as supplemented by additional information dated March 17,2004, for a ruling to waive 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 penalties of perjury in support of the ruling requested:

In September , you became unemployed when your employer ceased making payroll. At that time you maintained Account A, an Individual Retirement Account ("IRA") described under section 408(a) of the Code. From September until February , you used your savings to pay your family's living expenses. On February 19, , with job prospects extremely limited in your area, you directed a broker to sell shares of stock in mutual funds in your IRA with a market value of Amount B and to distribute this sum to you. This amount was deposited in a checking account with Bank H.

Your purpose for taking a distribution from your IRA was to pay monthly living expenses, while unemployed, estimated to be Amount C. Your financial advisor incorrectly advised you that you could only receive a single distribution from your IRA in a calendar year. But for this incorrect advice, you would have only withdrawn funds from your IRA as they were needed to pay actual expenses. Your rationale for the distribution of Amount B was that your job search could take up to a year. In actuality, you were able to obtain another job in July . During the months (March through June) that you used funds from your IRA distribution, you actually averaged Amount D in monthly expenses. During this same period, you collected unemployment compensation at the rate of Amount E per month and you received income for two contract projects. As such, you only used a total of Amount F of the distribution from your IRA for living expenses. The remainder of the distribution from your IRA, Amount G, is invested in a certificate of deposit at Bank H. You would now like to rollover Amount B to your IRA.

Based on the above facts, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount B that you received from Account 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) 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) 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).

Revenue Procedure 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 indicates that you took a distribution totaling Amount B from Account A because you were incorrectly advised that you could only receive a single distribution from your IRA in a calendar year. You used a total of Amount F from this distribution to pay living expenses while unemployed. Under these circumstances, you could not reasonably satisfy the requirement that funds totaling Amount G be deposited in an eligible IRA within 60 days of the distribution from Account 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. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts (Amount G) will be considered rollover contributions within the meaning of section 408(d)(3).

As to Amount F, you used these funds from your IRA distribution to pay living expenses while unemployed. The Committee Report describing legislative intent indicates that the Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. Using a distribution as a short-term loan to cover personal expenses is not consistent with the intent of Congress to allow portability between eligible plans. The information presented, as to Amount F, does not demonstrate circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code. Under your circumstances, the failure to waive the 60-day requirement, as to Amount F, would not be against equity or good conscience as that term is used in section 408(d)(3)(I). Thus, Amount F will not be considered a valid rollover because the 60-day requirement under section 408(d)(3) with respect to Amount F will not be satisfied.

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 _____, SE:T:EP:RA:T1, I.D.
, at _____

Sincerely yours,

A handwritten signature in black ink, appearing to be a stylized 'S' or 'J' with a vertical line through it.

Manager
Employee Plans Technical Group 1

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