



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200447042

AUG 26 2004

SE.T:EP:RA-TI

Uniform Issue List: 408-03-00

Legend:

Custodian A =
Bank B =
IRA C =
IRA D =
Custodian E =
Amount F =
Amount G =

Dear :

This letter is in response to a request for a letter ruling dated June 23, 2004, 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 maintained IRA C, an individual retirement account ("IRA") under Code section 408(a), with Custodian A. During _____, Bank B resigned as Trustee of IRA C. Bank B indicates they sent you notification of the need to rollover the proceeds from IRA C. They also indicate that since they received no instructions from you they liquidated IRA C and sent you a check dated March 31, _____. You state that you never received this check or any correspondence from Bank B. In January, _____ you received a Form 1099-R for the _____ taxable year showing a distribution of Amount F from IRA C.

You immediately contacted Bank B who confirmed that the distribution check was never cashed. On June 8, _____, a new check totaling Amount G was issued. This was equal to Amount F less federal income tax withholding of ten percent. On June 17, _____, you rolled over Amount F into IRA D sponsored by Custodian E.

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 F on March 31, _____, because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) 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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) 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).

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 Code 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 indicates that IRA C was liquidated by Bank B and a distribution check was issued dated March 31, You never received this check and a replacement check was issued dated June 8, Under these circumstances, you could not reasonably satisfy the requirement that Amount F be deposited in an IRA within 60 days of its distribution by Bank B on March 31,

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 F from your IRA account with Custodian A. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met, the deposit of Amount F into IRA D on June 17, 2004, will be considered a rollover contribution within the meaning of 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. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the provisions of a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representative.

If you wish to inquire about this ruling, please contact _____, SE:T:EP:RA:T1, I.D.
_____, at (202) _____

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc:

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