

INTERNAL REVENUE SERVICE

200518087

FEB - 9 2005

Uniform Issue List: 408.03-00

SE: T: EP: RA: T4

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

Month K=

Month L=

Date M=

Date N=

Months O and P=

Date Q=

Date R=

Dear [REDACTED] :

This is in response to your request of \_\_\_\_\_, as supplemented by \_\_\_\_\_

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correspondence \_\_\_\_\_, through your authorized representative, for 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:

Taxpayer A is \_\_\_\_\_. Taxpayer A suffers from various medical conditions. Taxpayer A was hospitalized for eight days during Month K. During Month L Taxpayer determined to list h \_\_\_\_\_ house for sale in the belief h \_\_\_\_\_ medical condition was caused by adhesives that were part of h \_\_\_\_\_ house. On Date M, Taxpayer A went to Bank D and withdrew Amount B from IRA C and placed the check for Amount B in a desk drawer in h \_\_\_\_\_ home. Because of h \_\_\_\_\_ medical condition Taxpayer A planned to sell h \_\_\_\_\_ property and use the proceeds of the sale along with Amount B to purchase a new residence. On Date N, 60 days after the withdrawal of Amount B, Taxpayer A listed h \_\_\_\_\_ house for sale. During Months O and P Taxpayer's medical condition improved and did not pursue the sale of h \_\_\_\_\_ house or the purchase of a new residence.

Taxpayer A forgot about the check for Amount B and it remained in h \_\_\_\_\_ desk drawer until \_\_\_\_\_ was contacted by Bank D on Date Q inquiring about the outstanding check that had not been cashed. Any effort to rollover the distribution back into IRA C was too late because the 60-day period had already expired. On Date R, Taxpayer A deposited Amount B into a money market account at Bank D. Taxpayer A would like to redeposit Amount B into IRA C at Bank D.

Taxpayer A represents 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 rollover requirement with respect to Amount B.

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 60<sup>th</sup> 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 60<sup>th</sup> 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 Taxpayer A demonstrates that the ability to redeposit Amount B back into IRA C was within the reasonable control of Taxpayer A at all times during the 60-day rollover period.

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Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount B.

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 \_\_\_\_\_, at  
. Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

*Ada Perry*

*for*

, Manager  
Employee Plans Technical Group 4

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