



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200430033

APR 30 2004

Uniform Issue List: 408.03-00

Legend:

Taxpayer =

Bank M =

Amount X =

Condition E =

Date A =

Date B =

Age W =

Dear Taxpayer:

This letter is in response to a ruling request submitted by you dated _____, in which you request 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 a widow who is Age W, and has suffered a number of health problems, including Condition E, since Date A. Because of these health problems, and the economy at that time after Date A, you erroneously liquidated your investment portfolio, including your Individual Retirement Arrangement (IRA). As a result of this, you received the distribution of Amount X from your IRA on Date B.

After later receiving treatment for the effects of these health problems, especially Condition E, you became aware that you had erroneously closed your IRA. However, at the time you realized your error, you discovered that you could not rollover these IRA funds since the sixty day period under section 408(d)(3) of the Code had already expired (you state that you intend to open an IRA at Bank M and deposit Amount X into it, if this waiver is granted).

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 X, 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) of the Code, 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 –

- (1) 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,
- (2) 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 one-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.

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) of the Code, 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 your health problems, especially Condition E, prevented you from realizing that you had erroneously withdrawn Amount X from your IRA as part of the liquidation of your investment portfolio. In addition, you also did not realize the requirement to deposit Amount X into an IRA within the 60-day period.

Therefore, pursuant to section 408(c)(3)(I) of the Code, we waive the 60-day rollover requirement with respect to the part of Amount X that constitutes an eligible rollover distribution pursuant to section 402(c)(4) of the Code. An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include after-tax employee contributions or distributions required by section 408(a)(6) and section 401(a)(9) of the Code (because you are over age 70 1/2, minimum distributions are required under these Code sections). You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. If all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to the part of Amount X that constituted an eligible rollover distribution, such amount will be considered a 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 that may be applicable thereto.


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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
I.D. # at

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose