

INTERNAL REVENUE SERVICE

200433024

MAY 17 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

IRA X =

IRA Y =

Bank I =

County L =

State M =

Dear

In a letter dated January 25, 2004, you requested 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:

On _____ Bank I received a Notice of Levy Writ of Execution on certain bank accounts held by Taxpayer A. Two of these accounts levied were IRA Accounts owned by Taxpayer A, IRA X and IRA Y. As provided by law the proceeds from these accounts were sent to the County L Sheriff to be held until the appropriate court could judge whether these accounts were exempt from the Writ of Execution. Bank I withheld Federal and State income tax from these accounts.

On _____ Taxpayer A filed a Claim of Exemption with State M, County L, Superior Court, a court of competent jurisdiction. On _____, the Court affirmed Taxpayer A's claim of exemption and ordered the levying officer, County L Sheriff, to release any funds held. However, these funds could not be transferred to an eligible retirement plan within the 60 day period required under section 408(d)(3)(A) of the Internal Revenue Code.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distributions from IRA X and IRA Y because the failure to waive such requirement would be a hardship and 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)(l) 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)(l) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(l), 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 indicates that, pursuant to a writ of execution served upon the custodian of his IRAs X and Y, distributions were made from said IRAs. Upon timely appeal on the part of Taxpayer A, the IRAs were found to be exempt from said writ and returned to Taxpayer A. However, by that time, the 60-day rollover period of Code section 408(d)(3)(A) had expired. In summary, the facts of this case show that distributions from IRAs X and Y were made without the consent of Taxpayer A, and that Taxpayer A's actions to reverse said distributions and return the distributed amounts to other IRAs were reasonable and timely undertaken.

Therefore, pursuant to Code section 408(d)(3)(l), the Service hereby waives the 60-day rollover requirement with respect to the distribution of amounts from IRA X and IRA Y during October 2003. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter to make a rollover contribution of the proceeds from IRAs X and Y to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code 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. 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 _____ Please address all correspondence to _____.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of Letter Ruling
Notice of Intention to Disclose