



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200433027

MAY 21 2004

SE.T.EP.RA:T4

Uniform Issue List: 408.03-00

Legend:

Individual A =

Brokerage Firm B =

IRA X =

Amount D =

Date M =

Dear Mr. :

This is in response to your ruling request dated March 14, 2003, supplement by correspondence dated April 19, 2004, and April 29, 2004, for a waiver of the 60-day rollover requirement in section 408(d)(3) of the Internal Revenue Code.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Individual A maintained IRA X at Brokerage Firm B. Individual A took a distribution from IRA X of Amount D on Date M. Individual A received no information from the broker at Brokerage Firm B with respect to the 60-day rollover requirement and had believed Amount B could be rolled over within 90 days. Before the expiration of 90 days, Individual A was told by another broker at Brokerage Firm B that he could not rollover

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Amount D to an IRA because the 60-day rollover period had passed. Individual A attained 70 ½ prior to 2002.

As a result of the lack of accurate information, Individual A did not redeposit Amount D into an IRA within 60 days of Date M. Instead, Individual A deposited Amount D in a personal account with the broker. Individual A made no rollovers from an IRA within the one year period prior to Date M.

Based on the above facts and representations, you request a ruling that the Service waive the 60-day rollover requirement 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) 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 401(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 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; 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; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates that Individual A was not supplied with information by Brokerage Firm B regarding the 60-day rollover requirement. As a result, Amount D was deposited in a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D (less the required distributions for 2002 and 2003 described below) pursuant to section 408(d)(3)(I) of the Code. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount D in cash (less the required distributions for 2002 and 2003 described below) to an IRA, provided all other requirements of section 408(d)(3) of the Code are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount D (less the required distributions for 2002 and 2003 described below) will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

It has been represented that Individual A attained age 70 ½ prior to 2002. Thus, Individual A had a Code section 401(a)(9) required distribution for calendar years 2002 and 2003. The calendar year and required distributions may not be rolled over into an IRA.

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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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If you have any questions please contact

Sincerely yours,

Donzel H. Littlejohn

for

Donzel H. Littlejohn, Manager
Employee Plans Technical Group 4