

200434027

MAY 24 2004

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Amount B=

Amount C=

IRA D=

IRA E=

Bank F=

Date 1=

Month 1=

Date 2=

Month 2=

Date 3=

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Dear :

This is in response to your request of , 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 . deceased spouse had primary responsibility for the household investment matters until died on Date 1. At the time of death he owned IRAs D and E.

During Month 1 Taxpayer A informed the holder of IRAs D and E about death. After providing the necessary information, on Date 2, Taxpayer A received, as beneficiary, Amounts B and C. Unaware that Amounts B and C represented taxable income and with no explanations about the rollover option, Taxpayer A deposited Amounts B and C into regular checking account.

During Month 2, Taxpayer A consulted with an investment advisor who informed that was entitled to rollover IRAs into own IRA within the 60 day period allowed by the Internal Revenue Code (the Code) to avoid any adverse tax consequences. Upon learning about right to a rollover and obtaining the proper guidance, on Date 3, Taxpayer A used Amounts B and C to establish own IRA at Bank F.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts B and C.

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—

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- (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)(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 fact that _____ was not given the proper guidance by the holder of IRAs D and E in handling IRAs, _____ inexperience with financial transactions and all the distractions resulting from _____ prevented _____ from depositing Amounts B and C into _____ own IRA within the 60-day time limit.

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Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts B and C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amounts B and C, deposited in your own IRA with Bank F on Date 3, will be considered rollover contributions 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 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