



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200540051

AUG 25 2005

SE: T: EP: RA: T4

Uniform Issue List: 408.03-00

Legend:

Individual A =  
Bank B =  
Company C =  
Amount D =  
Date E =  
Date F =  
IRA X =

IRA Y  
Annuity Application =

Dear

This is in response to your ruling request dated \*\*\*\*\* for a waiver of the 60-day rollover requirement 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:

Individual A, age \*\*, received a distribution of Amount D on \*\*\*\*\*from IRA X maintained by Bank B. Individual A intended to place Amount D in another IRA within the 60-day period allowed under section 408(d)(3) of the Code. To this end, three days after receiving the distribution on \*\*\*\*\*, Individual A completed an application for an individual retirement annuity, IRA Y Annuity Application from Company C in the amount of Amount D. The annuity contract and accompanying information was not delivered to Individual A until \*\*\*\*\*, four days prior to the expiration of the 60-day rollover period. Shortly thereafter, after reading the contract, Individual A cancelled it on \*\*\*\*\*, within the specified time limit of twenty days. The IRA Y annuity contract provides, in relevant part, that the customer has the right to cancel the contract within a \*\*\*-day inspection period which begins on the date the contract is received by the customer.

Individual A received a check in the amount of Amount D from Company C on \*\*\*\*\*, with an explanation that Amount D was a refund of money on a contract that was not taken. Individual A placed Amount D in a savings account where it remains and requested a ruling from the Service to extend the 60-day rollover period.

Also, at the time of the distribution Individual A was receiving radiation treatments following a medical diagnosis that she was suffering from cancer. Individual A was also providing daily medical care for her sister who was residing with her, and has since passed away. Thus, in short, you assert that your illness and the treatments you were receiving for it as well as the illness of your sister for whom you were the primary caregiver combined with the delay of Company C in forwarding to you both the annuity contract and refund check prevented you from completing a timely rollover of Amount D into another IRA.

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

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 or 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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), 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 demonstrates that after you received Amount D on Date E, within three days on Date F, you completed an IRA Y annuity application with Company C evidencing an intent to purchase an IRA annuity contract. You exercised your right to cancel the IRA Y annuity contract within the specified cancellation period and no IRA was created. The information presented and documentation submitted by you is consistent with your assertion that you intended to roll over Amount D and that your failure to do so within the 60-day period was due to your medical condition and the treatments and illness of your sister for whom you were the primary caregiver and the delay of Company C in forwarding to you both the annuity contract and refund check.

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 Amount D

(less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D (less amounts described below) into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(F) of the Code, this ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact\*\*\*\*\*  
\*\*\*\*\*

Sincerely yours,

*for* *Adam Perry*  
Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted copy of this letter