



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

200402028

Uniform Issue List: 408.03-00

OCT 14 2003

Legend:

Taxpayer A =

Taxpayer B =

Individual C =

Amount D =

Company E =

Company M =

IRA X =

T:EP:RA:TH

Dear

This is in response to your letter dated _____ as supplemented by correspondence and communications dated _____ in which you request, 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 maintains an Individual Retirement Account (IRAs). Taxpayer A was married to Taxpayer B.

Taxpayer A (Taxpayer) hired Individual C, who works for Company M, to manage investment due to the declining stock market. In _____ after

meeting with the Taxpayer, Individual C suggested to the Taxpayer to move the IRA from Company E and establish an IRA account with Company M. Taxpayer verbally gave Individual C instructions to rollover the IRA into the new IRA with Company M. However, due to an oversight, Individual C inadvertently established a regular brokerage account instead of a Rollover IRA. This caused a lump sum distribution to occur on

The Taxpayer was made aware of the mistake after receiving an annuity transaction statement dated from Company E of the distribution with Form 1099-R, submitted with this ruling request. The amount distributed from IRA X is Amount D. Taxpayer relied on Individual C to establish new IRA. The 60-day rollover period had expired.

Based on the facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D, 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 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 the Taxpayer demonstrates a mistake on the part of Individual C failing to complete the transaction as instructed by the Taxpayer, and indicates that the Taxpayer could not reasonably satisfy the requirement that Amount D, be deposited in an IRA within 60 days of the distribution from IRA X, respectively. The failure to deposit Amount D into a Rollover IRA within the 60-day period was beyond the reasonable control of the Taxpayer, and the failure to waive the 60-day requirement would be against equity or good conscience.

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. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D. On , Individual C established a Rollover IRA account with Company M and have deposited Amount D received by Taxpayer. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts 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.

If you wish to inquire about this ruling, please contact Please address all correspondence to T:EP:RA:T4.

Sincerely yours,

Manager, Technical Group 4
Employee Plans
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: Internal Revenue Service
Manager, Gulf Coast EP Area
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Dallas, TX 75242