



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

200404054

OCT 28 2003

Uniform Issue List: 408.03-00

T:EP:PA:T4

Legend:

Taxpayer =

Plan A =

Plan Administrator =

Limited Partnership A =

Custodian X =

Custodian Y =

Company Z =

IRA F =

Commissioner S =

Amount F =

Amount G =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

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Dear Taxpayer:

This letter is in response to a ruling request submitted by your authorized representative dated \_\_\_\_\_, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

On Date 1, the Taxpayer invested Amount F of the Individual Retirement Arrangement (IRA) funds in Limited Partnership A through Custodian X. However, as a result of the discovery of acts of fraud by Custodian X, Commissioner S took possession and control of Custodian X on Date 2. The assets for Custodian X were then placed in receivership with Company Z. Subsequently, the accounts held by Custodian X were purchased by Custodian Y, and then reinvested into Limited Partnership A.

Later, without the knowledge and consent of the Taxpayer, Limited Partnership A liquidated the Taxpayer's account and issued a check for Amount G that was received by the Taxpayer on Date 3. The Taxpayer made a number of attempts to correct this situation, but was unable to do so due to problems experienced by the Taxpayer with Custodian Y. The Taxpayer eventually deposited the check for Amount G in a non-interest bearing checking account, and on Date 4, the Taxpayer deposited the funds from Amount G in another IRA account, IRA F. Because of the actions of Custodian Y, the Taxpayer deposited the funds in IRA F beyond 60-days from the date of the original distribution.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount G 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 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 or 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 one-year period ending on the day of such receipt such individual Received any other amount described in section 408(d)(3)(A) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(B) 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)(B) 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, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(l) of the Code, 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 you presented demonstrates hardship because of the unexpected and unrequested distribution of your IRA funds in Limited Partnership A, and the actions of Limited Partnership A in not effecting correction. You could not reasonably satisfy the requirement that Amount G be deposited in an eligible retirement plan or IRA within 60 days of the distribution from Limited Partnership A. The failure to deposit Amount G into an IRA within the 60-day period was beyond your reasonable control 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, we waive the 60-day rollover requirement with respect to the part of Amount G that constitutes an eligible rollover distribution pursuant to section 402(c)(4) of the Code. An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include after-tax employee contributions or distributions required by section 401(a)(9) of the Code. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. If all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to such contribution, this amount will be considered a rollover contribution 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 that 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.

Your request for a waiver of the 60-day rollover requirement was accompanied by a check for the user fee amount of \$ . Since the correct user fee for ruling requests such as this is normally \$90, you may be entitled to a refund of the excess fee paid. Instructions for submitting a request for such a refund are contained in section 15.11 of Revenue Procedure 2003-1, 2003-1 I.R.B. 1.

If you wish to inquire about this ruling, please contact

Sincerely yours



Alan C. Pipkin  
Manager, Technical Group 4  
Employee Plans

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

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cc: