

INTERNAL REVENUE SERVICE 200508025

ORIGINAL

NOV 29 2004

Uniform Issue List: 408.03-00

6 E.T.: EP: RA: T3

Legend:

Taxpayer A =

Amount D =

Bank C =

Dear [REDACTED]

In letters dated May 17, 2004, July 23, 2004, August 12, 2004, and November 12, 2004, your authorized representative requested 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:

On December 29, 1986, Taxpayer A set up an Individual Retirement Account (IRA) with the Bank C. Taxpayer A is eighty years old and has become mentally impaired. Taxpayer A was losing track of his bank accounts and other assets because of his mental condition. As a result, he wanted to consolidate all Bank C accounts into one account with Bank C. On July 29, 2003, Taxpayer A removed Amount D from his IRA and deposited Amount D in his checking account at Bank C.

As a result of his medical condition, Taxpayer A did not understand the tax consequences of removing the money from his IRA and failing to re-deposit it within sixty (60) days into another IRA.

On or about April 9, 2004, Taxpayer A's accountant discovered that Taxpayer A had withdrawn Amount D from his IRA, and had not re-deposited said amount within sixty (60) days into another IRA. Taxpayer A's accountant then asked Bank C to transfer the

balance of Amount D back to Taxpayer A's IRA. The bank would not redeposit the amount because the sixty (60) day period had expired, and the IRA had been closed out.

On or about April 12, 2004, Taxpayer's son contacted a tax attorney to seek a waiver of the 60-day rollover requirement.

On May 3, 2004, Taxpayer A, assisted by his daughter-in-law, transferred Amount D from Taxpayer A's checking account to a certificate of deposit account (CD) at Bank C to await the response from the Internal Revenue Service. Amount D has remained in the CD.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6).

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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) 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 on behalf of Taxpayer A indicates that Taxpayer A has become mentally impaired. As a result of his medical condition Taxpayer A was confused and failed to understand the necessity to make a rollover of his distribution from his IRA within the requisite 60 days.

Therefore, pursuant to Code section 408(d)(3)(i), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the roll over of any amounts required to be distributed pursuant to Code section 408(a)(6).

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 [REDACTED] at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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