200404056

INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

OCT 27 2003

T:EP:RA:T4

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

Bank E=

Dear Mr.:

This is in response to your letter dated March 12, 2003, 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 is a -year old retiree. On March 25, 2002, Bank D issued Taxpayer A a check for Amount B. Four days later, Amount B was deposited to Taxpayer A's joint Premium Personal Savings Account at Bank E.

Sometime during May of 2002, Taxpayer A instructed Bank E to use Amount B to establish an IRA for Taxpayer A. In September of 2002, Taxpayer A contacted Bank E to verify that the IRA had been established. Bank E claimed that Taxpayer A did not ask them to open the IRA, but thought they still could do it.

In January of 2003, Bank E informed Taxpayer A that IRS rules did not allow them to open the IRA since the 60 day rollover period had already expired. Finally, Bank E opened an IRA for Taxpayer A on February 28, 2003.

Taxpayer A realized that he needed to rollover Amount B into IRA C within the 60 day period allowed by the Internal Revenue Code (the Code) to avoid any adverse tax consequences. Taxpayer A indicates that Bank E's failure to timely execute his instructions prevented the timely rollover. The bank error was beyond the control of Taxpayer A.

Taxpayer A always intended to rollover Amount B within the 60 day period since the distribution and gave instructions to Bank E to do so.

Taxpayer A represents that no other amount was distributed from IRA C within the one year period since the last distribution.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B 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.

Taxpayer A indicates that he asked Bank E to rollover Amount B, but due to Bank E's error, which was beyond his control, prevented Taxpayer A to satisfy the requirement that Amount B be deposited in IRA C within 60 days of the distribution. Taxpayer A indicates that failure to waive the 60-day requirement because of Bank E's error 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 B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B, in cash, into IRA 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, 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 , at . Please address all correspondence to .

Sincerely yours,

Ada Perry

for Manager, Technical Group 4
Employee Plans

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

Cc: