



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200443037

7/27/04

SE. T. EP. RA. T4

Uniform Issue List: 408.03-00

Legend:

Individual A =

Amount D =

Amount E =

Amount F =

Bank H =

Date L =

Date M =

Date N =

IRA X =

Dear :

This is in response to a request of June 9, 2003, as supplemented by letters dated June 12, 2003, and July 2, 2004, through your authorized representative, for 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:

Individual A's husband had recently died on Date L. Individual A, at age 73, was the beneficiary of her deceased husband's IRA which she rolled into IRA X shortly after her husband's death. On Date M, Individual A closed IRA X and received Amount E. On Date N, Individual A deposited Amount D into a certificate of deposit at Bank H and deposited Amount F into a checking account.

Individual A had little experience in handling financial matters. Individual A had intended to move her funds to an IRA at a more convenient location, Bank H. She believed that her instructions were being followed by Bank H. In early when Individual A's tax return was being prepared, it was discovered that Amount D had been placed in a non-IRA account by Bank H. At that time the 60-day rollover period had expired.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to 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 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) 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; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates that Individual A relied on Bank H to deposit Amount D into an IRA. Instead, the money was put into a certificate of deposit.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D (less the required distributions described below). Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount D in cash (less the required distributions described below) to an IRA set up and maintained by Individual A, provided all other requirements of section 408(d)(3) are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount D (less the required distributions described below) will be considered a rollover contribution within the meaning of section 408(d)(3).

It has been represented that Individual A had attained age 70 ½ prior to calendar year  
Thus, Individual A had a Code section 401(a)(9) required distribution for calendar  
year . . . . . If said required distribution had not been taken, it must be taken and may not  
be rolled over into Individual A's IRA.

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 ruling is directed only to the taxpayer that 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 please contact.....

Sincerely yours,

Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 4