

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

200623065

Uniform Issue List: 408.03-00

MAR 17 2006

T:EP:RA:T3

Legend:

IRA X =

Amount A =

Bank B =

Company C =

Dear :

This is in response to your request dated July 7, 2005, as supplemented by correspondence dated February 8 and 20, 2006, in which your authorized representative requested, on your behalf, 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.

You are 57 years old. You established an Individual Retirement Annuity, IRA X, in 1997. The value of IRA X dropped 50 percent in value in less than one year, which caused you to withdraw funds from IRA X to prevent further loss. On February 12, 2003, you received a distribution from IRA X totaling Amount A. Your intent was to roll over the IRA X distribution of Amount A into another IRA that was held by a different financial institution. To accomplish this, in February 2003, you took the IRA X distribution check of Amount A to your bank, Bank B. You met with a Bank B representative and explained that you had withdrawn your account balance from IRA X and wanted to deposit it into a safer IRA account that would both protect and increase your remaining IRA funds. The Bank B representative told you that she would have another representative of Bank B contact you and that he or she could assist you in accomplishing these investment goals.

You were contacted by another representative of Bank B who was also an investment executive for Company C, which is affiliated with Bank B. The Company C investment executive told you that he had found an investment vehicle which would meet your investment criteria. Based upon your prior discussions with the Bank B representative, you assumed that this new investment vehicle was also an IRA and that the Bank B representative had informed the Company C investment executive of your distribution from IRA X and your intent to roll over Amount A into another IRA.

On May 23, 2003, Amount A was deposited into a non-IRA account with Company C. You have no idea why the deposit did not occur within the 60-day rollover period since you thought that the rollover would be accomplished as soon as you took the IRA X distribution check to Bank B in February 2003.

In correspondence dated March 7, 2005, you received notification from the Internal Revenue Service that you owed additional tax due to unreported taxable income due to the distribution from IRA X. This was your first indication that Amount A was not properly rolled over into an IRA, which was your intent.

You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a miscommunication or misunderstanding by the Bank B representative in relaying your intent to the Company C investment executive, which led to Amount A being placed into a non-IRA account.

You further represent that Amount A has not been used for any purpose and remains in the non-IRA account with Company C.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A contained in section 408(d)(3) of the Code in this instance.

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 one-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)(l) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) 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)(l) 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)(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 and documentation your authorized representative submitted on your behalf is consistent with your assertion that your failure to accomplish a timely rollover was caused by errors committed by a financial institution, specifically a miscommunication or misunderstanding by the Bank B representative in relaying your intent to the Company C investment executive, which led to Amount A being placed into a non-IRA account.

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A 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 which may be applicable thereto.

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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.

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Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact . Please address all correspondence to

Sincerely yours,


, Manager
Employee Plans Technical Group

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