



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200423039

Uniform Issue List: 408.03-00

MAR 9 2004

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*T. EP. RA. T2*

Legend:

- Taxpayer A = \*\*\*
- Amount C = \*\*\*
- Company E = \*\*\*
- IRA G = \*\*\*
- Account D = \*\*\*

Dear \*\*\*:

This is in response to your letter dated March 26, 2003, and supplemented by correspondence dated November 11, 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 maintained IRA G with Company E. On November \_\_\_\_\_, Taxpayer A withdrew Amount C from IRA G. During the last week of January \_\_\_\_\_ Taxpayer A met with her tax preparer to complete her \_\_\_\_\_ tax returns. When Taxpayer A's tax preparer learned of the IRA G distribution, he advised Taxpayer A to redeposit Amount C into IRA G as soon as possible. On or about February \_\_\_\_\_ per her tax preparer's instructions, Taxpayer A attempted to redeposit Amount C into IRA G. However, Company E would not allow the rollover because the 60-day limit had expired. On February \_\_\_\_\_, in an attempt to show her intent to redeposit Amount C into IRA G, Taxpayer A deposited Amount C into Account D, a regular savings account at Company E. Taxpayer A asserts that she never used Amount C, that she never cashed the check

that represented the distribution of Amount C from IRA G, and that the check representing the distribution of Amount C from IRA G was deposited into Account D where such distribution continues to be held.

Based on the foregoing facts and representations, the following ruling has been requested:

That the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount C from IRA G.

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)(B) 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.

The information presented by Taxpayer A demonstrates that she did not cash the check she received from IRA G and that she attempted to redeposit Amount C back into IRA G in early February, . However, Company E would not accept the redeposit of Amount C back into IRA G because the 60-day time period had elapsed. Nonetheless, Taxpayer A, on February , in an effort to indicate her intent to preserve her retirement savings, deposited the check she received in the amount of Amount C into Account D where such amount continues to be held.

Therefore, with respect to your ruling request, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C from IRA G. Taxpayer A is granted a period of 60 days from the issuance of this ruling to contribute Amount C to an IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, this amount will be considered a valid rollover contribution within the meaning of Code section 408(d)(3).

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 does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

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 by others as precedent.

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If you have any questions regarding this ruling, please contact \*\*\*, SE:T:EP:RA:T2 at  
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Sincerely,

**(signed) JOYCE E. FLOYD**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose Form 437