

200443039

INTERNAL REVENUE SERVICE

JUL 29 2004

Uniform Issue List: 408.03-00

SET:EP:PA:TY

Legend:

Taxpayer A=

Amount B=

IRA X=

Contract C =

Amount E =

Company F =

Amount G =

Amount H=

Dear :

This is in response to your letter dated April 2, 200 , 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).

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

During you requested and received Amount B from IRA X. On October you used Amount B to purchase Contract C from Company F.

During November you made arrangements to obtain a partial distribution from Contract C. Contract C is not an IRA or other eligible retirement plan. You made a mistake while preparing the distribution instructions which resulted in a distribution of Amount E instead of the desired partial distribution of Amount G. You now want to redeposit Amount H (the excess of Amount E over Amount G) into an IRA.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to Amount H.

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

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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. Similar rules apply to distributions taken from qualified trusts or qualified 403(a) annuity plans.

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.

Although information presented shows a substantial personal hardship, it does not demonstrate the type of circumstances that would justify a waiver of the 60-day rollover period. The distribution of Amount E was made from Contract C rather than from an IRA, qualified plan or tax-sheltered annuity.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to Amount H. Thus, Amount H cannot be rolled over because the distribution from Contract C is not an amount paid or distributed out of an IRA under section 408(d)(1) 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.

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If you wish to inquire about this ruling, please contact _____, at
. Please address all correspondence to _____.

Sincerely yours,

JSI

_____, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose