



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200524036

MAR 22 2005

Uniform Issue List: 408.03-00

*SE: T. EP. RA. TY*

Legend:

Individual A	=
Bank B	=
Amount C	=
Date D	=
Date F	=
IRA X	=

Dear

This is in response to a ruling request dated \*\*\*\*\*, submitted by your authorized representative, for a waiver of the 60-day rollover requirement 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:

On Date D Individual A went to a branch office of Bank B where she maintained investments in two separate certificates of deposit (CDs). One of the CDs was held in IRA X, and the other CD was a non-IRA certificate of deposit. Individual A requested a withdrawal in Amount C from the non-IRA certificate of deposit.

Individual A was not asked to sign any form requesting a withdrawal from IRA X. Individual A received a cashier's check for Amount C and deposited that sum in another financial institution in a money market account. Individual A had no intention of taking a distribution from IRA X and did not sign the form required for a distribution from an IRA. Nevertheless, the bank employee distributed Amount C from IRA X. Individual A did not discover this error until she received a Form 1099-R. At the time Individual A contacted Bank B to correct the problem, the 60-day rollover period had expired. Bank B has admitted in a letter dated Date F that the bank failed to have Individual A complete an IRA distribution form.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount C.

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 60<sup>th</sup> 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 60<sup>th</sup> 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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.

Revenue Procedure 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 demonstrates that an error was committed by an employee of Bank B which resulted in an unintended distribution from IRA X. You were not aware of this distribution until after the expiration of the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount C. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount C 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 that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions regarding this ruling, you may contact

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Sincerely yours,

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Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose  
Deleted copy of this letter