

200406052

NOV 12 2003

INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

*T:EP:RA:T4*

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

Bank E=

Dear :

This is in response to your letter dated June 1, 2002, as supplemented by letters dated August 21, 2002 and April 24, 2003, in which you request, through your authorized representative, 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:

You are 79 year-old married individual who owned IRA C. You decided to change the IRA C custodian from Bank D to Bank E.

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In late December 2001, you told Bank D you wanted to transfer IRA C from Bank D to Bank E. After contacting Bank D, you and your ailing spouse left for to spend the winter there. Soon after arriving in , your wife's heart and kidney condition worsened and required hospitalization and surgery. She became critically ill and began to have heart problems and kidney failure.

~~On January 30, 2002, Bank D transferred Amount B to your personal checking account without telling you about the 60-day time period for making a rollover. You knew Amount B was in your checking account but did not deposit Amount B in Bank E, because you were dealing with your spouse's critical condition, getting her to the hospital for surgery, treatment, doctor's appointments. You could not focus on handling your financial affairs for several months because of the stress of the situation.~~

Later, when your spouse's condition improved and you had time to think about your financial affairs again, you attempted to deposit Amount B in Bank E. Bank E advised you the 60 day rollover period had passed.

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

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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.

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 you have presented demonstrates that the financial institution did not follow your instructions and that the subsequent stress and confusion you experienced when your wife's critical heart and kidney condition that required hospitalization and surgery prevented you from immediately correcting the situation. Under the circumstances you could not reasonably satisfy the requirement that Amount B be deposited in an eligible retirement plan or IRA within 60 days of the distribution. The failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount B, in cash, into an IRA account. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions 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 is directed only to the taxpayers 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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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 wish to inquire about this ruling, please contact \_\_\_\_\_, at \_\_\_\_\_, at \_\_\_\_\_.  
Please address all correspondence to \_\_\_\_\_.

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Sincerely yours,



Alan C. Pipkin, Manager  
Employee Plans Technical Group 4

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

Cc: