

200538029

INTERNAL REVENUE SERVICE

JUN 29 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T4

Legend:

Taxpayer A=

Amount B=

IRA X=

Bank E =

Bank F=

Company G =

Date I=

Date J=

Non-qualified  
Annuity K=

Dear :

This is in response to your letter dated , 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).

Page 2

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

Taxpayer A maintained IRA X with Bank E. An Investor Advisor at Bank E explained to Taxpayer A, \_\_\_\_\_, the advantages of moving Amount B into an annuity contract yielding a higher rate of interest. On Date I the Investor Advisor at Bank E transferred Amount B from IRA X to establish a non-IRA Annuity K in favor of Taxpayer A at Company G. Two weeks later Taxpayer A received certain paperwork from Company G regarding Annuity K. Taxpayer A was not satisfied with the terms of Annuity K and cancelled Annuity K with Company G.

On Date J, \_\_\_\_\_ days before the 60-day rollover period expired, Taxpayer A received a check for Amount B from Company G representing the cancellation of Annuity K. Taxpayer A deposited the check for Amount B into an existing account Taxpayer A had at Bank F with the intention of rolling over Amount B into an IRA at Bank F.

Taxpayer A asserts that she was under medical care for various health problems during the final months of \_\_\_\_\_. Documentation submitted by Taxpayer A demonstrates that she was being treated during this time. Taxpayer asserts that her medical condition impaired her ability to accomplish a timely rollover. When preparing her \_\_\_\_\_ income tax return, Taxpayer A discovered she had not made any rollover deposit into an IRA and that the 60-day rollover period had expired. Taxpayer A now wants to deposit Amount B, as a rollover, into an IRA account at Bank F.

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

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 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 Taxpayer A withdrew IRA funds to purchase a non-IRA annuity which she subsequently cancelled. Taxpayer A deposited the funds into an existing non-IRA account and did not discover her failure to rollover into an IRA until she was preparing her [REDACTED] income tax return. The documentation submitted by Taxpayer A demonstrates that because of medical treatment for various health problems, she was unable to deposit Amount B into an IRA within the 60-day rollover period.

Page 4

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. An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include after-tax employee contributions or distributions required by section 401(a)(9) of the Code (because you are over age 70 1/2, minimum distributions are required under this Code section for the taxable year of the IRA distribution). Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into an 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, this amount 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 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.

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

Sincerely yours,

*Ada Perry*

, Manager

Employee Plans Technical Group 4

*Ja*

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose