



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200520037

FEB 24 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. T3

**Legend:**

Bank A =  
Bank B =  
IRA X =  
Amount D =

Dear:

This is in response to a request submitted by your authorized representative dated August 25, 2004, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated January 10, 2005, supplemented the request.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

You are over age 70 ½. You maintained IRA X at Bank A. On August 11, [REDACTED] you closed IRA X and withdrew Amount D in the form of a check. On the same day, intending that Amount D be rolled over into an individual retirement arrangement ("IRA"), you opened two certificates of deposit at Bank B totaling Amount D. The receipts for the certificates of deposit (which you believed were qualified IRAs) indicated that they were "individual" accounts.

When you were preparing to file your tax return for [REDACTED] you discovered that Amount D was not properly rolled over.

Based on the foregoing, you request that the Internal Revenue Service waive the 60-day rollover limitation under section 408(d)(3) of the Code in order to allow you to roll over the IRA X distribution to another IRA.

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 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 (January 27, 2003), 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 presented demonstrates that you attempted to affect a timely rollover, but that due to a miscommunication between you and the bank, you were unable to satisfy the requirement to redeposit Amount D in a proper IRA. The information presented by you is consistent with your assertion that you attempted to rollover Amount D. You deposited the same amount that was distributed from IRA X into an account at Bank B on the same day that you received the distribution. The certificates of deposit that you received as evidence of the deposit were labeled "individual" accounts. Amount D remains in those accounts.

In conclusion, we believe that the information presented demonstrates circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code. Under

200520037

Page 3

these circumstances, 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 waives the 60-day rollover requirement with respect to the distributions of the amounts from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. If all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to Amount D, such amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

You are over 70 1/2 and therefore have attained your required beginning date for purposes of section 401(a)(9) of the Code. In this regard, this ruling does not authorize the rollover of any portion of Amount D that may be required to be distributed to you by section 401(a)(9)

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 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.

If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID \*\*\*\*\* ) at (\*\*\*) \*\*\*-\*\*\*\* (not a toll free number). Please address all correspondence to SE:T: EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: