

200406050

INTERNAL REVENUE SERVICE

T:EP:RA:TY

NOV 12 2003

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =
Amount B =
Amount C =
IRA Annuity D =
Whole Life Policy E =
Insurance Company F =
Bank G =

Dear :

This is in response to your letter dated April 2, 2003, 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).

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

Taxpayer A's spouse established IRA Annuity D with Insurance Company F. He designated Taxpayer A as his sole beneficiary in the event of his death. He was diagnosed with in 2000 and on June 2, 2001.

After the death of her spouse, Taxpayer A, found Whole Life Policy E issued by Insurance Company F on his life and applied for the proceeds of the death benefit,

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Amount C.

Shortly afterward, she was hospitalized for . She was still recovering from the effects of the operation when she received a check for Amount B dated June 25, 2002, from Insurance Company F payable to her as beneficiary. Below the words "Death Benefit" that were centered at the top of the check was the policy number of IRA Annuity D but no other information to indicate it was an IRA distribution. Confused by the words "Death Benefit", Taxpayer A believed Amount B was the insurance death benefit from Whole Life Policy E and deposited Amount B into her savings account in Bank G, intending to use it to pay health insurance premiums.

When Taxpayer A received a check for Amount C from Insurance Company F, she realized Amount B was a taxable IRA distribution, however, the 60-day rollover period had expired. She requests an extension of the 60-day period so she can establish a spousal IRA and rollover Amount B to avoid any adverse tax consequences.

Taxpayer A represents that no other amount was distributed from IRA D within the one year period since the original distribution.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B because the failure to waive such requirement would be against equity or good conscience.

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 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 facts presented by Taxpayer A demonstrate the check in Amount B issued by Insurance Company F was not clearly identified as an IRA distribution. Taxpayer A was recovering from heart surgery and in this condition, mistakenly believed the check represented the proceeds of an insurance policy that she deposited in a savings account. Insurance Company F did not provide her any other information on or with the check that Amount B was an IRA distribution nor did it provide her with information about making a rollover to another IRA. The situation was beyond the reasonable control of Taxpayer A, and 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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B

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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 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 _____, I.D. # _____, at _____.
Please address all correspondence to _____.

Sincerely yours,



Manager, Technical Group 4
Employee Plans

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

Cc: