

200407023

INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

NOV 17 2003

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

IRA E=

Dear :

This is in response to your request of May 5, 2003, through your authorized representative, for 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 is a 60 year old widow with no financial knowledge or experience. During 2002, Taxpayer A had some maturing investments that she made with the assistance of Bank D' staffers. Taxpayer A went to Bank D where IRA C had been established and withdrew Amount B. Taxpayer A intended to deposit the entire Amount B into an IRA.

While Taxpayer A was at Bank D to rollover IRA C, she was advised by a Bank D employee that because the interest rates were so low it was better for her to deposit Amount B into a regular account. Following the investment advice of the Bank D employee, Amount B was not deposited into an IRA as Taxpayer A had intended to do within the 60 day period allowed by the Internal Revenue Code (the Code). Instead Amount B was deposited into a non-IRA regular account.

It was not until Taxpayer A was preparing her 2002 income tax return when she learned that Bank D's employee had given her erroneous investment advice which caused the distribution of Amount B to become taxable.

Taxpayer A proposes to deposit Amount B into IRA E.

Taxpayer A represents that no other amount was distributed from IRA C 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 information presented by Taxpayer A demonstrates that her inexperience in this type of financial transaction and her trust in the investment advice of a Bank D employee prevented Taxpayer A from depositing Amount B into an IRA within 60 days since the distribution. The failure to deposit Amount B into an IRA within the 60-day period was solely because of the bad investment advice of Bank D 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 into IRA E. 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.

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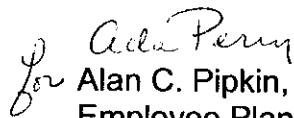
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

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

Sincerely yours,


for Alan C. Pipkin, Manager
Employee Plans Technical Group 4

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

Cc: