



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200433029

MAY 18 2004

Uniform Issue List 408.03-00

SE: T: EP: RA: T 4

LEGEND:

IRA X = *****

IRA Y = *****

Trustee A = *****

Amount B = *****

Dear *****:

This is in response to your letter dated *****, and
supplemented by letters dated ***** and
*****, requesting a ruling to waive the 60-day rollover
requirement contained in section 408(d)(3) of the Internal Revenue
Code ("Code").

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

In *****, you received a distribution from IRA Y. You believed this distribution was a death benefit from this account. After receiving the distribution, you deposited it into IRA X with Trustee A on *****, within the 60-day rollover period.

In **** or *****, you withdrew distributions from IRA X to purchase property, help your disabled brother financially, and also to pay personal insurance premiums. Your IRA trustee made you aware of the tax consequences that would follow if an IRA distribution was not rolled over within the 60-day limitation period made from IRA X. However, you continued to believe it was a death benefit account that would not have any tax liability.

You request a waiver of the 60-day rollover limitation under section 408(d)(3) of the Code in order to allow you to redeposit the distribution you received from IRA X.

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 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; 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.

It appears from the facts that you used the funds from your IRA distribution to settle personal debts and purchases and you disregarded the advice you received from the professional trustee of your IRA regarding the income tax consequences of failing to redeposit the distribution you received from the IRA within 60 days.

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Under section 408(d) of the Internal Revenue Code, distributions from an IRA are includible in income notwithstanding the fact that the distribution is attributable to the death of a former owner of the IRA. Under the circumstances, the failure to waive the 60 day requirement would not be against equity or good conscience.

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 have any questions please contact _____, I.D.#
at _____

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437