

201005058



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

NOV 12 2009

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SE:TE:IRA:T3

Legend:

- Taxpayer A = XXX
- IRA X = XXX
- Amount D = XXX
- Company E = XXX
- Company F = XXX
- Custodian = XXX
- Original Fund = XXX
- New Fund = XXX
- Company G = XXX
- Date H = XXX
- Date K = XXX
- Date L = XXX

Dear xxxxxxxx:

This letter is in response to your letter dated September 28, 2009, as supplemented by correspondence dated November 4, 2009, and November 9, 2009, submitted on your behalf by your authorized representative, 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”).

Under Penalty of Perjury, you have submitted the following facts and representations:

You represent that you received a distribution of Amount D from IRA X. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Company E and Company F which led to Amount D being placed into a non-IRA account. You further represent that Amount D has not been used for any other purpose.

You maintained IRA X, invested in the Original Fund, with Custodian. In consultation with Company E, you decided to liquidate IRA X in order to invest through a new IRA in the New Fund, an investment that IRA X Custodian was not able to hold because investments of IRA X was limited to investments in Original Fund. On Date H, you authorized your IRA X Custodian to wire transfer the funds in IRA X to the New Fund maintained with Company G. On Date K, Amount D was transferred from IRA X directly to Company G with the intent to invest Amount D in Taxpayer A's rollover IRA in the New Fund.

You further assert that Company E and Company F did not identify the need for a new IRA custodian and because of Company E and Company F errors, Amount D was not held in a qualified rollover IRA, nor was an IRA opened. Taxpayer A has submitted affidavits of Representatives of Company E and F admitting their errors in processing Taxpayer A's rollover request.

Further, documentation submitted by you, including statements from Company E, issued to you, which reflected that your investment was being held in an IRA, demonstrates that, at all times, you believed your funds were validly invested in an IRA. It was not until Date L that you learned that Amount D was not held in an IRA.

Based on the foregoing facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution 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 distribute, 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 received 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 in 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 included 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover was caused by mistakes made by Company E and Company F, which led to Amount D being placed into a non-IRA account. The information presented by you is consistent with your assertion that you attempted to rollover Amount D.

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 D from IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D 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 transactions 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 concerning this ruling, please contact xxxxxxxxxxxx SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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