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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

SEP - 1 2005

Uniform Issue List: 408.03-00

LEGEND:

T:EP:RA:T3

Taxpayer A:

City E:

County F:

State G:

Company S:

Company T:

Bank U:

Hurricane V:

IRA X:

Amount 1:

Amount 2:

Amount 3:

Amount 4:

Dear [REDACTED] :

This is in response to the letter in which you request an extension of the 60-day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") applicable to individual retirement accounts ("IRAs"). Your request is based on the following facts and representations.

Taxpayer A is a resident of City E, County F, State G. On or about September 4, 2004, Taxpayer A was forced to evacuate his residence due to the impending arrival of Hurricane V which struck Taxpayer A's residence on September 6, 2004. The next day, September 7, 2004, Taxpayer A reported the damage done to his residence to Company T which had issued his home owner's insurance policy. A few days later, Company T provided Taxpayer A with an insurance advance totaling Amount 3. Approximately three (3) months later, on or about December 2, 2004, Taxpayer A withdrew Amount 1 from his IRA X held with Company S in order to cover expenses pending receipt of additional insurance amounts from Company T. Approximately eight (8) days later, on or about December 10, 2004, Taxpayer A received a check in the amount of Amount 2 from Company T. However, the check was made out to both Taxpayer A and Bank U which held the mortgage on his house. Taxpayer A immediately endorsed the check and forwarded it to Bank U. On or about February 10, 2005, Taxpayer A received Amount 4 from Bank U to cover the costs of repair work being done on his residence. Having entered into an arrangement with the contractor that was performing the repair work, Taxpayer A was able to hold out Amount 1 from Amount 4 in order to replace Amount 1 back into his IRA X. Taxpayer A immediately attempted to roll over Amount 1 into his IRA X but was advised by Company S that it could not accomplish the rollover because the 60-day rollover period of Code section 408(d)(3)(A) had expired.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") with respect to the distribution of Amount 1 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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.

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 presented by Taxpayer A demonstrates that the failure of Taxpayer A to make a rollover contribution to an IRA within 60 days of receiving Amount 1 from IRA X was due to Bank U's failure to pay the insurance proceeds

to Taxpayer A in a timely manner. Taxpayer A received a check representing insurance proceeds sufficient to effectuate the essential repairs to his home and his intended rollover within eight (8) days of the date he withdrew Amount 1 from his IRA X, but the check was made out to both Taxpayer A and Bank U. In spite of Taxpayer A's taking immediate steps to have the proceeds of the check made payable to him individually, he did not receive said proceeds from Bank U until February 10, 2005, which was 10 days after the 60-day rollover period had expired.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 1 from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount no greater than Amount 1, except as noted below, to another IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts required to be distributed pursuant to Code section 401(a)(9), applicable to an IRA under Code section 408(a)(6), if any.

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 [REDACTED] at [REDACTED] (phone-not a toll-free number), or [REDACTED] (FAX). Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

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