



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200746016**
Release Date: 11/16/2007

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T:EP:RA:UK:T3

AUG 21 2007

Legend:

IRA X =

Amount A =

Financial Institution M =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This is in response to your request dated February 22, 2007, as supplemented by correspondence dated May 16, 2007, and May 24, 2007, 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").

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

You are age , and received a distribution on Date 1, 2006, from IRA X totaling Amount A. It is asserted that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was caused by the erroneous advice given to you by employees of Financial Institution M.

You assert that on or about Date 1, 2006, you withdrew Amount A from Financial Institution M with the intent of rolling the funds back into your IRA within the prescribed time period. At the time the distribution was made, employees of

Financial Institution M advised you that the rollover period was 90 days. You relied on this advice and did not realize that the advice given to you regarding the rollover period was incorrect.

On Date 2, 2007, the 90th day after the distribution, you returned Amount A to Financial Institution M for rollover into IRA X. It was at this time that you realized that the advice given to you by personnel of Financial Institution M was erroneous. After discussions with your financial advisor, you returned Amount A to IRA X and requested a letter ruling waiving the 60-day rollover requirement. The deposit was made on Date 3, 2007. On Date 4, 2007, Financial Institution M acknowledged that its employees had provided erroneous advice regarding the correct timeframe for rolling over Amount A.

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

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 (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 and documentation submitted by you is consistent with your assertion that a failure to accomplish a timely rollover of Amount A within the 60-day period prescribed by section 408(d)(3) was due to an error on the part of Financial Institution M. In reliance on erroneous advice given by the employees of Financial Institution M regarding the timeframe to rollover the distributed amount, you were 30 days late in attempting to complete the transaction.

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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 to you of Amount A from IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect Amount A the transfer of such amount into IRA X on Date 3, 2007 will be considered a rollover contribution within the meaning of Code section 408(d)(3).


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
Please address all 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

CC: