



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200904027

OCT 30 2008

Uniform Issue List: 408.03-00

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T:EP:RA:T2

Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Account F	=	XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Amount D	=	XXXXXXXXXXXXXXXXXXXX
Financial Institution M	=	XXXXXXXXXXXXXXXXXXXX
Company B	=	XXXXXXXXXXXXXXXXXXXX
Individual B	=	XXXXXXXXXXXXXXXXXXXX
Individual V	=	XXXXXXXXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXXXXXXXXXX

Dear [REDACTED]:

This is in response to your letter dated August 30, 2007, as supplemented by correspondence dated September 25, October 17, November 6, and November 28, 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 your request.

Taxpayer A, age 57, represents that she received a distribution of Amount D from IRA X, which she intended to rollover into another IRA. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section

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408(d)(3) was due to errors committed by Financial Institution M which resulted in Amount D being deposited into Account F, a non-IRA certificate of deposit, where it still remains.

Taxpayer A represents that on Date 1, she requested a distribution of Amount D from IRA X maintained at Company B with the intent of rolling Amount D into another IRA at Financial Institution M to get a better return on her investment. In order to accomplish this transaction, Taxpayer A executed an IRA Transfer Request instructing Company B to directly transfer IRA X to a traditional IRA at Financial Institution M. On Date 2, Company B transferred Amount D to Financial Institution M. However, Individual V, an employee of Financial Institution M, placed Amount D in Account F, a non-IRA certificate of deposit, instead of a traditional IRA. Taxpayer A represents that she did not discover the error until Date 3, when she received a notice from the IRS regarding her failure to report taxable interest earned by Account F.

Individual B, Assistant General Counsel of Financial Institution M, states, under penalties of perjury, that Individual V failed to establish an IRA for Taxpayer A as required by the internal procedures of Financial Institution M, and, having not established an IRA, Individual V deposited Amount D in a non-IRA account. As a result, Taxpayer A was unable to roll over the IRA X distribution from Company B to another IRA within the 60-day rollover requirement period.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount D 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 received the payment or distribution; or

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- (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 the 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)(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 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 the documentation submitted by Taxpayer A is consistent with her assertions that she failed to complete a rollover of Amount D to an IRA within the 60-day rollover period prescribed by section 408(d)(3) because of errors committed by Individual V and Financial Institution M.

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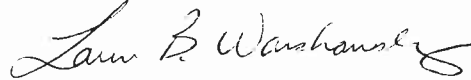
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a valid 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 regarding this letter, please contact XXXXXXXXX, ID Number XXXXXXXXX, at XXXXXXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4

Sincerely yours,



for Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

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