



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200907047

NOV 19 2008

Uniform Issue List: 408.03-00

T:EP:RA:IT4

Legend:

Taxpayer A =

Bank M =

Bank N =

IRA X =

Account Y =

Amount S =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This is in response to your letter dated _____, and supplemented by a letter dated _____, in which you request a waiver of 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 in support of the ruling request.

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Taxpayer A, age , represents that on Date 1 he received a total distribution from IRA X held at Bank M in Amount S.

Taxpayer A represents that he intended to rollover Amount S to an IRA certificate of deposit at Bank N. On Date 1, Taxpayer A received the total distribution of Amount S from IRA X in the form of a check. On Date 2, Taxpayer deposited the check for Amount S into Account Y, a certificate of deposit account (CD) at Bank N. Taxpayer A represents that he informed the clerk at Bank N of his intent to open an IRA CD. However, Account Y was a non-IRA CD.

On Date 3, Taxpayer A discovered that Amount S had not been deposited into a rollover IRA account at Bank N. Bank N investigated the matter and advised Taxpayer A in a letter dated Date 4 that Amount S had not been rolled over into an eligible rollover IRA due to a clerical error. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the clerical error made by Representative O of Bank N, which led to Amount S being placed into a non-IRA CD account. Taxpayer A further represents that Amount S has not been used for any other purpose.

Based on the facts and representations, you request 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 S 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 account 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 he 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 one-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 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) of the Code, 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 and documentation presented by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by a clerical error made by Bank N, which led to Amount S from IRA X being placed into a non-IRA account.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount S from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount S from IRA X into 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 S 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 transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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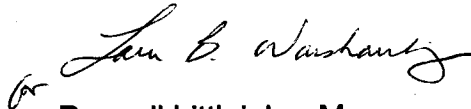
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This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact
I.D. No. , at

, SE:T:EP:RA:T ,

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose