



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

200907048

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 19 2008

T:EP: RA:TZ

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Account F = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXX
Bank S = XXXXXXXXXXXXXXXXXXXX
Institution C = XXXXXXXXXXXXXXXXXXXX
Individual M = XXXXXXXXXXXXXXXXXXXX
Individual K = XXXXXXXXXXXXXXXXXXXX
Individual R = XXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXX

This is in response to your letter dated October 2, 2007, as supplemented by correspondence dated October 23, October 25, October 26, October 27, November 27, December 4, and December 19, 2007, 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 your request.

Taxpayer A, represents that he received a distribution of Amount D from IRA X which was held by Institution C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error committed by Individual K, an employee of Bank S, in selecting the

incorrect funding type, which resulted in Amount D being deposited into a non-IRA Certificate of Deposit, where it still remains. Amount D has not been used for any purpose.

Taxpayer A asserts that on or before Date 1, pursuant to instructions from Individual K, a financial advisor employed with Bank S, he requested a distribution from IRA X with the intent of rolling Amount D into an IRA at Bank S. On Date 1, Institution C issued Taxpayer A a check for Amount D. On Date 2, Taxpayer A hand delivered to Individual K a check in Amount D payable to Bank S with the specific notation "IRA transfer ..." which he intended to deposit into an IRA account. However, while opening the account the incorrect funding type was selected by Individual K and instead of an IRA being opened, a non-IRA certificate of deposit account was opened. Letters submitted by Individual M, a Bank S Supervisor, and Individual R, a Bank S Operations Center Supervisor, and other documentation submitted by Bank S indicate that Amount D was erroneously deposited in Account F, a non-IRA certificate of deposit. The error was not discovered by Taxpayer A until Date 3.

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
- (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 his assertions that he failed to complete a rollover of Amount D to an IRA within the 60-day rollover period because of the error committed by Individual K.

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.

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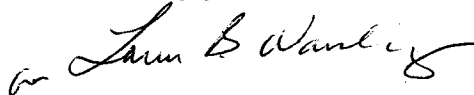
This ruling does not authorize the rollover of any amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

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 XXXXXXXXXX, ID Number XXXXXXXXX at XXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donzell H. Littlejohn".

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose