



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200931063

MAY 04 2009

SET:EP:RA:T4

Uniform Issue List: 408.03-00

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Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXX
- Individual J = XXXXXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXXXXX
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- Financial Institution A = XXXXXXXXXXXXXXXXXXXX
- Company P = XXXXXXXXXXXXXXXXXXXX
- Amount M = XXXXXXXXXXXXXXXXXXXX
- Fund I = XXXXXXXXXXXXXXXXXXXX
- Date 1 = XXXXXXXXXXXXXXXXXXXX
- Date 2 = XXXXXXXXXXXXXXXXXXXX
- Date 3 = XXXXXXXXXXXXXXXXXXXX
- Date 4 = XXXXXXXXXXXXXXXXXXXX
- Year 1 = XXXXXXXXXXXXXXXXXXXX

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Dear XXXXXXXX

This is in response to your ruling request dated September 2, 2008, as supplemented by correspondence dated March 24, 2009, and April 9, 2009, 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 requested.

Taxpayer A, age 68, represents that he received a distribution of Amount M from IRA X maintained by Financial Institution A. 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 errors made by Individual J and Company P. Taxpayer A further represents that Amount M has not been used for any other purpose.

Taxpayer A represents that he learned about an opportunity to invest in Fund I, a Company P investment pool. On Date 1, he met with Individual J, President of Company P, and inquired whether he could invest his self-directed IRA assets in Fund I. He was informed by Individual J that there would be no problem in making that investment because Fund I included other IRA investors. On Date 2, Taxpayer A received a distribution of Amount M from IRA X and completed the necessary paperwork to invest a portion of his IRA with Company P. On Date 3, according to Company P's instructions, Taxpayer A deposited a check in the amount of Amount M, payable to Fund I. Company P opened the account in the name of Taxpayer A's IRA, issued a mortgage-backed promissory note from Fund I in the name of Taxpayer A's IRA, and set up procedures for Fund I to issue monthly interest checks on the note to IRA X. However, Fund I, was not registered as a qualified IRA investment with Financial Institution A. On Date 4, Individual J's assistant assured Taxpayer A that under no circumstance will Amount M be a distribution from IRA X, but Individual J was not aware that Fund I needed to be registered as a qualified IRA investment with Financial Institution A. As a result, Individual J did not coordinate with Financial Institution A to confirm that the subject investment was a permissible investment, or follow Financial Institution A's procedures for establishing a qualified IRA investment.

Documentation provided indicates that Individual J and Company P inadequately advised Taxpayer A regarding the steps necessary to properly invest his self-directed IRA assets into Fund I. Specifically, Individual J has provided a statement under penalty of perjury that he was unaware that Fund I needed Financial Institution A's affirmative approval to be a qualified IRA investment. Both Individual J and Company P have provided statements that they erroneously believed that Fund I had complied with all necessary steps to have the investment remain part of IRA X.

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In Year 1, Taxpayer A notified Company P that the IRA interest payments were being treated as contributions by Financial Institution A. Upon investigation, Company P learned that it had erred by not registering Fund I with Financial Institution A as a qualified IRA investment, Company P immediately took steps to have Fund I approved by Financial Institution A. Although Fund I was subsequently approved, because the approval was given after the 60-day rollover period had expired with respect to the distribution of Amount M, Financial Institution A could not retroactively treat the transaction involving Amount M as an IRA investment and has continued to treat the transaction as a distribution, thus necessitating the request for a private letter ruling.

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 M 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

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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)(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 assertion that his failure to roll over the distribution within the 60-day rollover period prescribed by section 408(d)(3) of the Code was a result of errors committed by Individual J and Company P.

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 M from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount M 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 M 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.

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A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXX, ID Number XXXXXXXX at XXXXXXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for 

Donzell Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose