



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200958034

SE: T: EP: RA: TY

Uniform Issue List 408.03-00

XXXXX
XXXXX
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Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

IRA Y = xxxxx

IRA Z = xxxxx

Financial Institution C = xxxxx

Financial Institution D = xxxxx

Individual E = xxxxx

Amount N = \$ xxxxx

Amount O = \$ xxxxx

Amount P = \$ xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = xxxxx

Date 4 = xxxxx

Date 5 = xxxxx

xxxxx

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Date 6 = xxxxx

Date 7 = xxxxx

Dear xxxxx:

This is in response to a letter ruling` request dated August 7, 2008, as supplemented by correspondence dated September 25 and October 10, 2008, and February 19, 2009, submitted by your authorized representative on your behalf, for 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 made subject to penalties of perjury:

Taxpayer A, age 64, represents that he received distributions from IRA X, IRA Y and IRA Z of Amount N, Amount O and Amount P respectively. 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 refusal of Financial Institution D to accept the rollover when the checks representing the distributions were presented by Taxpayer A. Taxpayer A further represents that Amounts N, O and P have not been used for any other purpose.

Taxpayer A maintained three Individual Retirement Arrangements (IRA X, IRA Y and IRA Z) with Financial Institution C. In 2008, Taxpayer A decided to roll over all three IRAs to Financial Institution D. The account balances of IRA X, IRA Y and IRA Z, minus certain stock securities, were distributed to Taxpayer A in Checks 1, 2 and 3, respectively. Financial Institution C mailed Check 1 dated Date 1, Check 2 dated Date 2 and Check 3 dated Date 3 to Taxpayer A's residence. That portion of the IRAs invested in stock was to be transferred directly from Financial Institution C to Financial Institution D. Taxpayer A received Check 1 for Amount N on Date 4. He received Check 2 for Amount O and Check 3 for Amount P on Date 5.

Prior to his actual receipt of the distribution checks, Taxpayer A contacted his financial advisor, Individual E, who is employed by Financial Institution D. Taxpayer A informed Individual E of Taxpayer A's decision to have maintenance of his IRA investments switched from Financial Institution C to Financial Institution D. Individual E agreed to take care of the preliminaries for the trustee to trustee stock transfer, which Individual E estimated would take approximately three weeks. Individual E also told Taxpayer A that, upon receipt by Financial Institution D of the necessary paperwork from Financial Institution C, he would then contact Taxpayer A to arrange a meeting between Individual E and Taxpayer A at the offices of Financial Institution D to finalize processing of the IRA assets previously held by Financial Institution C into IRA investments held by

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Financial Institution D. However, several weeks passed and Individual E did not contact Taxpayer A.

On Date 6, Taxpayer A contacted Financial Institution D, at which time Financial Institution D gave Taxpayer A an appointment for Date 7, which was fewer than 60 days after Taxpayer A received Checks 1, 2 and 3. Taxpayer A presented these checks to Individual E to accomplish the planned rollover of the distributions from IRAs X, Y and Z to an IRA at Financial Institution D. However, Financial Institution D refused to accept the checks.

Based on the above 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 N, Amount O and Amount P from IRA X, IRA Y and IRA Z.

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) 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

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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) 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, 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 Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the refusal of Financial Institution D to accept the rollover when the checks representing the distributions were presented by Taxpayer A.

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 Amounts N, O and P from IRAs X, Y and Z. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amounts N, O and P into a rollover IRA or IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to Amount N, Amount O and Amount P, contribution of each amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling assumes that IRA X, IRA Y and IRA Z satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling 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.

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If you wish to inquire about this ruling, please contact XXXXX, I.D. # XXXXX, by telephone at XXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Laura B. Washburn

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: XXXXX
XXXXX
XXXXX
XXXXX