



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

200950054

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 17 2009

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Individual B = XXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Company F = XXXXXXXXXXXXXXXXXXXX

Company H = XXXXXXXXXXXXXXXXXXXX

Company J = XXXXXXXXXXXXXXXXXXXX

Bank C = XXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXXXXXX

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Dear XXXXXXXX

This is in response to your request dated November 24, 2008, as supplemented by correspondence dated January 13, 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 49, represents that he received a distribution from IRA X totaling Amount D. 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 failure of Company F to follow the instructions given by Individual B of Company H, which led to Amount D not being deposited into IRA Y within the 60-day rollover period.

Taxpayer A maintained IRA X until Date 1. On Date 2, Amount D was transferred by wire into Taxpayer A's checking account at Bank C. Taxpayer A represents that on Date 3, within the 60-day rollover period, he went to the office of Individual B of Company H, and gave him a check in Amount D to be deposited into IRA Y. Taxpayer A states that his previous rollover experience was with Company J and it was customary to withdraw from his IRA and redeposit the funds within the rollover period by dropping off a check with Company J, who would deposit the funds back into the IRA on the same day. On Date 3, Taxpayer A took the check to Individual B's office 4 days prior to the expiration of the rollover period. On that same day, Individual B mailed to Company F the check and a form signed by Taxpayer A instructing Company F to deposit Amount D into IRA Y with Company F. However, Amount D was not deposited into IRA Y until Date 4, 10 days after the 60-day rollover period had expired.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement 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:

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- (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 time during the 1-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 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 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 the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to the failure of Company F, which failed to follow the rollover instructions of Individual B of Company H which resulted in Amount D not being deposited into IRA Y until 10 days after the 60-day rollover period.

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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. 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 which was placed in IRA Y 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 XXXXXXXXXXXX, ID Number XXXXXXXX, SE:T:EP:RA:T4 at XXXXXXXXXXXX.

Sincerely yours,

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

Donzell Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose