

201001027



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 13 2009

U.I.L. 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXXXXX
Account M = XXXXXXXXXXXXXXXXXXXXXXXX
Financial Institution B = XXXXXXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXXXXXX
Company E = XXXXXXXXXXXXXXXXXXXXXXXX
Date F = XXXXXXXXXXXXXXXXXXXXXXXX
Date G = XXXXXXXXXXXXXXXXXXXXXXXX
Individual H = XXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxx, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the

60-day period prescribed by section 408(d)(3) was due to a mistake made by the financial institution B which resulted in Amount D being deposited into Account M, a non-qualified investment account, where it still remains. Taxpayer A further asserts that Amount D has not been used for any other purpose.

Taxpayer A maintained an Account M with Financial Institution B. Account M also held IRA X purchased from Company E. In xxxxxxxxxx, Taxpayer A contacted Individual H and told him that Taxpayer A wished to alter her investments because she was not satisfied with the rate of return she was getting on her investments. Taxpayer A had no intention of and gave no direction to transfer funds from qualified investments to non-qualified investments.

On Date F, Taxpayer A instructed Individual H at Financial Institution B to sell underperforming investments and reinvest the proceeds in other investments. Upon this, Individual H sold certain investments including qualified annuity IRA X. As a result, on Date F, Company E sent a check totaling Amount D to Financial Institution B which was reinvested in non-qualified investments.

Taxpayer A represents that Individual H was aware of the fact that Account M was also holding a qualified annuity IRA X and he failed to maintain an appropriate control to indicate that IRA X was a qualified annuity. Taxpayer A further represents that she had a long-standing relationship with Financial Institution B and that the Financial Institution B was aware of the nature of Taxpayer A's investments. Taxpayer A asserts that but for the mistake by the Financial Institution B, the sale of the qualified annuity IRA X and deposit of the funds in an eligible account would have been a direct rollover. That Taxpayer A became aware of this error on Date G when she received Form 1099-R from Company E.

In a letter dated xxxxxxxxxx, submitted with the request, Individual H has admitted his error of selling the qualified annuity IRA X and depositing the proceeds in a non-qualified investment.

Based upon the foregoing facts and representations, Taxpayer A requests that the 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 distribute, 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 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)(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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount D was due to the error committed by Financial Institution B. Further, in a letter dated xxxxxxxxxxxxxxxx, submitted with the request, Individual H of Financial Institution B admitted his mistake of selling the qualified annuity IRA X and depositing its proceeds, totaling Amount D, in a non-qualified investment.

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 Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D 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 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 concerning this ruling, please contact xxxxxxxx at xxxxxxxx.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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