

201029020



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 26 2010

Uniform Issue List: 408.03-00

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XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

SET. EPIRA, T2

Legend:

Taxpayer A =	XXXXXXX
Financial Institution M =	XXXXXXX
Financial Institution N =	XXXXXXX
Financial Institution O =	XXXXXXX
IRA X =	XXXXXXX
Fund P =	XXXXXXX
Account G =	XXXXXXX
Amount S =	XXXXXXX
Date 1 =	XXXXXXX
Date 2 =	XXXXXXX
Date 3 =	XXXXXXX
Date 4 =	XXXXXXX
Date 5 =	XXXXXXX
Date 6 =	XXXXXXX

Dear XXXXXXXX:

This is in response to your letter dated July 30, 2009 as supplemented by additional correspondence submitted on November 2, 2009, submitted on your behalf by your authorized representative, in which you requested 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 penalty of perjury in support of your ruling request.

Taxpayer A, age **, represents that he received a distribution from IRA X held by Financial Institution M totaling Amount S. Taxpayer A asserts that his failure to accomplish a rollover of Amount S within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by an employee of Financial Institution O, which led to Amount S being placed into a non-IRA account. Taxpayer A represents that Amount S has not been used for any other purpose.

On Date 1, Taxpayer A contacted Financial Institution O and indicated that he would like to rollover Amount S from IRA X to an IRA to be established at Financial Institution N to invest in Fund P. Taxpayer A was advised by an individual at Financial Institution O, the General Partner of Fund P, to transfer Amount S from IRA X to Financial Institution N, which held the funds for Financial Institution O in Account G. Taxpayer A was assured that the transfer of funds would be accomplished as a tax-free rollover. On Date 2, Taxpayer A completed the subscription documents to transfer Amount S from IRA X to an investment account in Fund P which indicate that the investment in Fund P was being made on behalf of his IRA. On Date 3, Taxpayer A received a check for the full amount of IRA X (Amount S). On Date 4, Taxpayer A transferred Amount S to Account G.

Due to an error made by Financial Institution O, Amount S was placed into a non-retirement taxable account. Documentation from the President and CEO of Financial Institution O admits that Financial Institution O erred in failing to register the Fund maintained by Financial Institution N with Financial Institution M as a qualified IRA investment. As such, when Taxpayer A requested a tax-free rollover, Financial Institution M treated the withdrawal as a distribution rather than a rollover. Thus, Financial Institution M issued a 1099-R on Amount S because the Fund was not recognized as a registered qualified investment by Financial Institution M.

On Date 5, the fund manager of Financial Institution O was notified that Amount S had not been processed as tax free rollover. On Date 6, Taxpayer A received a 1099-R from Financial Institution M and realized that the funds had not been handled according to his intent.

Based upon the above facts and representations, you request 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 S.

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 to whose benefit the account 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 he 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 408(d)(3)(A)(i) from an IRA which was 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)(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 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) of the Code, 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; and, (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish the rollover within the 60-day period prescribed by Section 408(d)(3) of the Code was due to an error by Financial Institution O which led to Amount S being placed in a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the IRS hereby waives the 60-day rollover requirement with respect to the distribution of Amount S. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement are met with respect to Amount S which was placed in IRA Y will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions regarding this ruling, please contact XXXXXXXX (ID *****) at (***) ***-****.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Notice of Intention to Disclosure
Copy of deleted ruling letter

CC: XXXXXXXX