



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

201142030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

JUL 28 2011

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

T:EP:RA:T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX
Individual M = XXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXX
IRA Y = XXXXXXXXXXXXXXXXXXXXX
Amount A = XXXXXXXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXXXXXXX

Amount C = XXXXXXXXXXXXXXXXXXXXX
Bank B = XXXXXXXXXXXXXXXXXXXXX
Bank C = XXXXXXXXXXXXXXXXXXXXX
Company F = XXXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx, 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").

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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 A and a distribution from IRA Y totaling Amount B with the intent to roll the distributions over to another IRA within the 60-day period. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error committed by Individual M of Company F. Taxpayer A further asserts that Amount C (Amounts A and B) has not been used for any other purpose.

Taxpayer A, age 67, had IRA X and IRA Y in Certificates of Deposit with Bank B which matured in October of 2010. On Date 1, Taxpayer A received a distribution from IRA X of Amount A and a distribution from IRA Y of Amount B totaling Amount C and on Date 2, deposited Amount C in her personal checking account with Bank C.

Taxpayer A represents that on Date 3, she delivered her personal check in the amount of Amount C to her Financial Advisor, Individual M, of Company F to open an IRA account with Company F. However, Individual M inadvertently checked the incorrect box on the application form and the account was opened as a non-IRA account.

Documentation submitted by Individual M acknowledges his error in inadvertently checking off the wrong box on the application form. Individual M further stated that this error was one hundred percent his fault, of which he did not realize until recently when reviewing the account that this mistake was made.

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 C (Amount A and Amount B) from IRAs X and Y.

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-

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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 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 C

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was due to an error committed by Individual M, of Company F. Further, documentation from Individual M shows that a mistake was made by him.

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 C. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount C 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 xxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,

for *Ada Perry*
Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
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