



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

201225021

COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 27 2012

Uniform Issue List: 408.03-00

\*\*\*  
\*\*\*  
\*\*\*

T:EP:RA:T3

Legend

- Taxpayer A:                   \*\*\*
- IRA X:                           \*\*\*  
                                     \*\*\*
- Amount D:                   \*\*\*
- Amount E:                   \*\*\*
- Bank F:                       \*\*\*
- Bank S:                       \*\*\*
- Financial Institution P:   \*\*\*
- Individual B:               \*\*\*
- Individual M:               \*\*\*
- Date 1:                       \*\*\*
- Date 2:                       \*\*\*
- Date 3:                       \*\*\*
- Date 4:                       \*\*\*
- Date 5:                       \*\*\*
- Date 6:                       \*\*\*

\* \* \*

Page 2

Dear \* \* \*:

This is in response to your request dated July 27, 2011, as supplemented by correspondence dated September 26, 2011, October 6, 2011 and October 25, 2011, 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 (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age \_\_\_\_\_ represents that on Date 2, he received a distribution of Amount D from his Individual Retirement Arrangement (IRA), IRA X, with Bank S. Taxpayer A asserts that his failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Individual M of Bank S which resulted in Amount D being placed in a non-IRA account, where it remains.

Taxpayer A represents that IRA X matured on Date 1. Upon the advice of Individual M, a financial advisor employed with Bank S, Taxpayer A requested a distribution of Amount D from IRA X with the intent of rolling Amount D into another IRA. After receiving the distribution on Date 2, he deposited Amount D into an interim non-IRA account with Bank F. Following Individual M's advice, on Date 3, he purchased a universal life insurance policy (Policy) from Bank S totaling Amount E. The Policy was also maintained by Bank S. Four days later Taxpayer A learned of a substantial additional cost for the policy, unrelated to the change in the tax qualified status of his investment, which was unacceptable to him. With the assistance of Individual B, an Executive for Bank S, the Policy was rescinded and Amount E was returned to Taxpayer A on Date 4, which he deposited into his savings account, a non-IRA account on Date 5. On Date 6, Taxpayer A used Amount D plus additional funds to purchase a CD with Financial Institution P.

An affidavit submitted by Individual M and other documentation submitted indicate that Amount D was erroneously deposited into the series of non-IRA accounts, because Individual M forgot that Amount D had been distributed from an IRA and that such error occurred through no fault of Taxpayer A. Taxpayer A did not learn of the error until he received Form 1099-R for the tax year ending December 31, \_\_\_\_\_ from Bank S after the 60-day rollover period had expired.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (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--

(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 60<sup>th</sup> 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 60<sup>th</sup> 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 includible in gross income because of the application of section 408(d)(3).

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 section 408(d)(3)(A) 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).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) 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,

\*\*\*

Page 4

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 you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by your reliance on the erroneous advice of Individual B of Bank S.

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. You are granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover IRA. 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 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 transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto. This letter expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter 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.

If you have any questions, please contact \*\*\* by phone at \*\*\* or fax at \*\*\*.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc: \*\*\*  
\*\*\*  
\*\*\*