



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

201228047

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 17 2012

U.I.L. 408.03-00

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XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

T:EP.RA:T3

Legend:

Taxpayer A	XXXXXXXXXXXXXXXXXXXXX
IRA X	XXXXXXXXXXXXXXXXXXXXX
Amount D	XXXXXXXXXXXXXXXXXXXXX
Company F	XXXXXXXXXXXXXXXXXXXXX
Date 1	XXXXXXXXXXXXXXXXXXXXX
Stock A	XXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your request dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx, xxxxxxxxxx, and xxxxxxxxxx, 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 the ruling requested:

Taxpayer A represents that he received a distribution from IRA X of Stock A valued at Amount D with the intent to roll it over in a timely manner. 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 wrong advice he received from the account representative of Company F.

Taxpayer A, age 81, had IRA X with Company F. On Date 1, Taxpayer A withdrew Stock A from IRA X with intent to roll it over within the required time period.

Taxpayer A asserts that pursuant to the plan originated by Company F, and at Company F's suggestion, he borrowed the Stock A worth Amount D to increase his margin capacity in his personal account. Taxpayer A further asserts that he was told by the account representative of Company F that he could roll the shares back into his IRA X within 6 months.

Taxpayer A asserts that he specifically recalls being told by the account representative of Company F that he could rollover the withdrawal as long as he did it within 6 months. However, Taxpayer A has not presented any supporting evidence of this statement. Taxpayer A asserts that on the basis of his conversation with the account representative of Company F he missed the 60 day deadline to rollover the funds. Taxpayer A further asserts that he was not aware that he missed the rollover deadline until he subsequently tried to rollover the funds in late December of 2010. At that time Taxpayer A was informed by his financial institution, Company F, that it could no longer accept the rollover because the 60 day period had already expired.

Taxpayer A asserts that if he had been told that the rollover period was 60 days and not 6 months, he would never have agreed to withdraw the shares of stock worth Amount D as he had access to other funds, or could have closed out several transactions to end the margin issue.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code 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 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)(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(d)(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 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.

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Taxpayer A has not presented any evidence to the Service to show that he was given wrong advice by the account representative of Company F. Taxpayer A has not provided any documentation from Company F or from the account representative with whom he had been conversing that support his assertion of an error committed by his financial institution. Thus, Taxpayer A fails to satisfy the criterion set forth in Rev. Proc. 2003-16.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Stock A from IRA X.

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.

A copy of this ruling letter is being sent to your authorized representative pursuant to a Power of Attorney filed in this office.

If you have any questions concerning this ruling, please contact xxxxxxxxx
xxxxxxxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice 437

Cc: xxxxxxxxxxxxxxxxxxxx