



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201304012

OCT 31 2012

Uniform Issue List: 408.03-00

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T:EP:RA:T2

Legend:

Taxpayer A = \*\*\*

Company A = \*\*\*

IRA X = \*\*\*

Financial Institution A = \*\*\*

Financial Advisor A = \*\*\*

Financial Institution B = \*\*\*

Amount A = \*\*\*

Dear

This is in response to your request dated August 11, 2010, as supplemented by correspondence dated March 4, 2011, March 21, 2011, April 13, 2011, June 6, 2011, and July 13, 2011, 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 penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from IRA X totaling Amount A. 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 a mistake made by Financial Institution A, in that Financial Advisor A, an employee of Financial Institution A, provided an incorrect rollover deadline date to Taxpayer A.

Taxpayer A is the owner of IRA X maintained by Financial Institution A. Taxpayer A works for Company A, an S-corporation 100% owned by Taxpayer A's wife.

In early 2009, Company A needed capital as a result of the economic downturn. On March 2, 2009, Taxpayer A contacted Financial Advisor A, his financial advisor at Financial Institution A, to see if Taxpayer A could use funds in IRA X on a short-term basis (four to six weeks). Financial Advisor A assured him that he could use his IRA money on a short-term basis and that Financial Institution A would wire the funds to Company A's account at Financial Institution B. Accordingly, on March 5, 2009, Financial Institution A wired Amount A from IRA X to Company A's account. None of the IRA distribution paperwork included any statements as to the 60-day rollover deadline. Taxpayer A called Financial Advisor A to find out exactly when Amount A would need to be redeposited to IRA to avoid a taxable distribution. Financial Advisor A replied that June 5, 2009 was the deadline; however, June 5, 2009 was past the 60-day deadline. Financial Advisor A has confirmed that he advised the incorrect date of June 5, 2009. Following Financial Advisor A's instructions, Taxpayer A wired back Amount A from Company A's account to IRA X on June 5, 2009.

Taxpayer A completely relied on Financial Advisor A's instructions as to the time to redeposit Amount A. Had he been aware of the 60-day deadline, Taxpayer A had the funds available in Company A's account during the 60-day period to redeposit Amount A in IRA X.

Based on the facts and representations, you request a ruling 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 A.

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.

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) 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) (related to required minimum distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

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) 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.

Rev. Proc. 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, 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 submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by a mistake made by Financial Institution A, in that Financial Advisor A, an employee of Financial Institution A, provided an incorrect rollover deadline date to Taxpayer A.

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 A from IRA X. Taxpayer A has represented that Amount A has remained in IRA X since being redeposited. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A to IRA X on June 5, 2009 will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 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.

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If you wish to inquire about this ruling, please contact \*\*\*\*\* at \*\*\*  
\*\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

## Enclosures:

Deleted copy of ruling letter

Notice 437 - Notice of Intention to Disclose

cc: \*\*\*