



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201407028

NOV 19 2013

Uniform Issue List: 408.03-00

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XXXXXXXXXXXXX  
XXXXXXXXXXXXX

T:EP:RA:TS

**Legend:**

Taxpayer A	=	XXXXXXXXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Company M	=	XXXXXXXXXXXXXXXXXXXX
Company N	=	XXXXXXXXXXXXXXXXXXXX
Financial Institution O	=	XXXXXXXXXXXXXXXXXXXX
Asset D	=	XXXXXXXXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXXXXXXXXXX
Date 4	=	XXXXXXXXXXXXXXXXXXXX
Date 5	=	XXXXXXXXXXXXXXXXXXXX
Year 6	=	XXXX

Dear xxxxxxxxxxxx:

This is in response to your request, dated February 1, 2013, as supplemented by your correspondence dated October 8, 2013, 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 on Date 1 she owned IRA X with respect to which Company M was the custodian. On Date 1, Taxpayer A received a letter from Company M informing her that Company M was resigning as the custodian of IRA X. IRA X held Asset D, an ownership interest in a limited liability company. The letter from Company M further stated that Asset D would be distributed to Taxpayer A personally, and that the total value of the distribution would be reported on Internal Revenue Service Form 1099-R for Year 6. Taxpayer A asserts that her failure to accomplish a rollover of Asset D within the 60-day period required under section 408(d)(3) was due to an error made by Company N.

The letter from Company M instructed Taxpayer A that, in order to effect a change of ownership of Asset D, Taxpayer A had to complete an assignment form enclosed with the letter, and forward the completed assignment form to Company N along with the re-registration fee, if applicable.

On Date 2, Taxpayer A faxed the letter she received from Company M, along with the assignment form, to Company N. Company N prepared the documents required to rollover Asset D into an IRA held by Financial Institution O.

On Date 3, Taxpayer A received from Company N what she believed to be all of the documentation necessary to complete the rollover of Asset D from IRA X to an IRA held by Financial Institution O. Taxpayer A immediately transmitted such materials to Financial Institution O in order to complete the transaction. However, Taxpayer A did not realize that Company N had failed to submit the necessary assignment form provided by Company M to Financial Institution O. Taxpayer A did not become aware of this error until the expiration of the applicable 60-day rollover period.

On Date 4, a final decision was made by Financial Institution O to not accept the rollover of Asset D into an IRA held by Financial Institution O based on the fact that the assignment form had not been received by Financial Institution O within the applicable 60-day rollover period. Thereafter, in a letter dated Date 5, Company N admitted that it failed to provide the assignment form

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to Financial Institution O, thereby preventing the rollover of Asset D to be completed within the applicable 60-day rollover period.

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 Asset D.

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)(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.

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), 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 her assertion that her failure to accomplish a timely rollover of Asset D was due to an error committed by Company N.

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 Asset D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Asset 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, the contribution 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 transaction described herein under the provisions of any other section of either the Code or regulations.

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

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 wish to inquire about this ruling, please contact xxxxxxxxxx (ID xxxxxxxxxx) at (xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T 3.

Sincerely yours,



Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose