



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201419022

FEB 11 2014

**Uniform Issue List: 408.03-00**

T. EP. RA. TB

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XXXXXXXXXXXXXXXXXX

**Legend:**

Taxpayer A = XXXXXXXXXXXXXXXXXXXX  
IRA X = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
IRA Y = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
Company C = XXXXXXXXXXXXXXXXXXXX  
Company D = XXXXXXXXXXXXXXXXXXXX  
Company E = XXXXXXXXXXXXXXXXXXXX  
Company F = XXXXXXXXXXXXXXXXXXXX  
Amount B = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to your request, received by the Internal Revenue Service on April 22, 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 received a distribution from IRA X totaling Amount B. Taxpayer A asserts that his failure to accomplish a rollover with respect to such distribution within the 60-day period prescribed by section 408(d)(3) was due to an error by Company E.

Taxpayer A states that he became dissatisfied with the performance and service of Company C as the custodian of IRA X. Therefore, he attempted a direct rollover from Company C to another financial institution. However, Company C required a "gold medallion signature" in order to perform such a direct rollover. After several unsuccessful attempts at obtaining a gold medallion signature, Taxpayer A requested a distribution of his IRA X assets from Company C. Such a distribution did not require a gold medallion signature.

On March 5, 2012, Taxpayer A received a distribution from IRA X equal to Amount B. Taxpayer A immediately deposited Amount B into his checking account with Company D. At such time, Taxpayer A had considered depositing Amount B into an individual retirement account at Company D, but he had received a job offer to work with an employer that offered a section 401(k) plan. Therefore, Taxpayer A decided to transfer Amount B to his new employer's 401(k) plan.

The custodian of the assets of Taxpayer A's new employer's 401(k) plan was Company E. On April 26, 2012, Taxpayer A mailed a personal check to Company E, with appropriate administrative forms, pursuant to instructions he had received from his new employer. Taxpayer A states that his intent was to accomplish the transfer of Amount B to his employer's 401(k) plan and that he believed he had performed all of the necessary actions nine days prior to the expiration of the 60-day rollover period under section 408(d)(3) of the Code.

Taxpayer A checked his 401(k) plan account balance status as well as his Company D account status online to verify that Amount B was successfully transferred into his 401(k) account at Company E. However, the transfer never occurred. On May 16, 2012, which was after the expiration of the 60-day rollover period, Taxpayer A called Company E to inquire about the status of the funds. A representative of Company E reported to Taxpayer A that there was no sign of his check. Taxpayer A immediately issued a stop payment on the check and called Company F to initiate a transfer of funds into IRA Y at Company F. Amount B was deposited into IRA Y at Company F on May 24, 2012, which was after the expiration of the 60-day rollover period.

On May 24, 2012, Taxpayer A received a form letter from Company E along with the personal check he had mailed to Company E. The form letter from Company E stated that Taxpayer A's personal check was not in good order because Company E required a cashier's or certified check. Company E's form letter to Taxpayer A was dated April 30, 2012, which was before the expiration of the 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 Amount B.

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 his assertion that his failure to accomplish a timely rollover was due to an error by Company E.

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 B from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met, the contribution of Amount B into IRA Y on May 24, 2012 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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 that 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.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxx (ID xxxxxxxxxxxx) at (xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



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

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose