

201619015



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 10 2016

T:EP:RA:T2

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXX
Bank D	=	XXXXXXXXXXXX
Amount E	=	XXXXXXXXXXXX
Individual M	=	XXXXXXXXXXXX

Dear xxxxxxxxxx:

This letter is in response to your request dated December 19, 2014, as supplemented by correspondence dated October 7, 2015, and October 26, 2015, 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 July 22, 2013, he received a distribution totaling Amount E from IRA X. Taxpayer A asserts that his failure to accomplish a rollover of Amount E 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 D.

Taxpayer A had IRA X with Bank D. Taxpayer A represents that in 2013, he visited with Individual M of Bank D and discussed rolling over his certificate of deposit (CD) in IRA X and reinvesting it in another CD. Since Individual M was not licensed to reinvest the CD in IRA X, Individual M referred Taxpayer A to another representative of Bank D who was not available at that time to speak to Taxpayer A.

Taxpayer A further represents that on July 22, 2013, Individual M completed a distribution election form to distribute Amount E from IRA X without the signature or consent of Taxpayer A. The election form provided that Amount E be deposited into Individual M's savings account with Bank D. After Taxpayer A became aware of the distribution from IRA X, he asked Individual M whether he would be taxed on the distribution of Amount E. Individual M told him that Amount E would be on "hold" until it was re-invested in another CD by another representative of Bank D.

Taxpayer A never heard further from Individual M or any other representative of Bank D. After the 60-day rollover period had expired, Taxpayer A contacted Bank D and became aware that Amount E had not been rolled over and Individual M had resigned from Bank D. Amount E has not been used for any other purpose and remains in Taxpayer A's savings account with Bank D.

Based on the foregoing facts and representations, you request that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount E.

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 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(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, 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 committed by Individual M, a representative of Bank D.

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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 E from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this letter to contribute Amount E into a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount E 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 408(a)(6) 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.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxx xxxxxxxxxxxxxx, at xxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,

 Ada Perry
for Carolyn E. Zimmerman, Acting Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose