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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

APR 16 2004

UIC: 9100.00-00

Legend:

Taxpayer A =

Sum 1 =

Sum 2 =

Company A =

Bank E =

Plan X =

IRA Y =

Dear Mr. :

In letters dated , and you requested 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:

From 1996 through 2002 Taxpayer A was employed by Company A which sponsored Plan X. Taxpayer A was a participant in Plan X. On , Taxpayer A received a distribution from Plan X in the amount of Sum 1. On , Taxpayer A rolled over Sum 1 into IRA Y, an individual retirement account (IRA) set up and maintained in his name with Bank E. Said rollover was timely within the meaning of Code section 408(d)(3). In , 2003, Taxpayer A received from the Internal Revenue Service ("Service") a notice of intent to levy. The notice of intent to levy applied to amounts held in IRAs. Shortly thereafter, on or about , 2003, Taxpayer A

withdrew Sum 2 from his IRA Y in an attempt to prevent the Service from successfully levying on said IRA amounts. On or about \_\_\_\_\_, 2003, the Service mailed Taxpayer A a "Notice of Federal Tax Lien" which Taxpayer A asserts he received on or about \_\_\_\_\_, 2003.

During \_\_\_\_\_, 2003, Taxpayer A received a letter from the Service which indicated that effective on or about \_\_\_\_\_, 2003, its pending lien action against Taxpayer A had been discontinued.

Taxpayer A asserts that he has not spent Sum 2 which he withdrew from his IRA Y.

Taxpayer A filed this request for letter ruling after the Service discontinued its lien action against him.

Based on the facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 2 from his IRA Y because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your ruling request, 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 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 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 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.

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6).

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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.

Revenue Procedure 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 by Taxpayer A demonstrates that he withdrew Sum 2 from his IRA Y solely as a result of his efforts to avoid the effects of a Service levy. Actions by a taxpayer to deliberately avoid a Service levy do not represent the type of circumstances upon which a waiver of the 60 day rollover requirement should be based under Rev. Proc. 2003-16.

Therefore, pursuant to Code section 408(d)(3)(I), your request for the Service to waive the 60-day rollover requirement with respect to the withdrawal of Sum 2 from Taxpayer A's IRA Y on or about June 16, 2003 is denied.

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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 wish to inquire about this ruling, please contact \_\_\_\_\_, I.D.  
at \_\_\_\_\_. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of ruling letter  
Notice of Intention to Disclose