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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200941031

JUL 15 2009

T:EP:RA:T4

Uniform Issue Code: 408.03-00

Legend:

Taxpayer A =

Bank M =

IRA X =

Amount R =

Amount S =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year K =

Dear :

This is in response to your letter dated September 3, 2007, and supplemented by letters dated November 1, 2007 and November 29, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling request.

Taxpayer A, age 73, represents that he received a distribution from IRA X of Amount S. 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 an error by an employee of Bank M, which led to Amount S being placed into two non-IRA certificates of deposit (CDs) with Bank M. Amount S has not been used for any other purpose.

In Year K, Taxpayer A maintained IRA X with Bank M. On Date 1, Taxpayer A went to Bank M to request a distribution of Amount R. During this process Taxpayer A spoke to a financial specialist of Bank M who suggested Taxpayer A change the investment in IRA X from a money market investment to certificate of deposit investments. On Date 2, Taxpayer A returned to Bank M and requested the financial specialist to change the IRA investments from money market to certificate of deposit investments to earn a higher interest rate. Instead of changing the investments within IRA X, on Date 2 the financial specialist issued two non-IRA certificates of deposits for a total of Amount S. After leaving Bank M on Date 2, Taxpayer A reviewed the paperwork completed by the financial specialist and realized the CDs were treated as withdrawals from IRA X.

The next day, Date 3, Taxpayer A returned to Bank M and spoke with the financial specialist and requested that Amount S be properly invested in certificates of deposit and transferred into IRA X. Taxpayer A was assured by the employee of Bank M that the error would be corrected. Taxpayer A subsequently discovered that the correction had not been made prior to the end of the required 60-day rollover period. Subsequent to the expiration of the 60-day rollover period, Taxpayer A contacted Bank M on Date 4, Date 5, and Date 6 regarding the Bank employee's error and of Taxpayer A's intent to invest Amount S into certificates of deposit in IRA X. Taxpayer A was assured by employees of Bank M that Amount S would be properly transferred into IRA X. In spite of Taxpayer A's efforts to get Bank M to correct the error, Amount S was never properly transferred back into IRA X by Bank M.

Based on the above facts and representations, you request 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 S from IRA X.

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 account 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^{th} day after the day on which he 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^{th} 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 one-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.

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) 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 and documentation presented by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error by a financial specialist of Bank M, which led to Amount S being placed into non-IRA certificates of deposit.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount S. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount S 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, Amount S 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 which may be applicable thereto.

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

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact , SE:T:EP:RA:T4, I.D. No. , at ( ) - .

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose