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

NOV 09 2012

COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

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T: EP: RA: TZ

Legend:

Taxpayer A = \*\*\*

IRA X = \*\*\*

Financial Institution A = \*\*\*

Amount A = \*\*\*

Amount B = \*\*\*

Company A = \*\*\*

Employee A = \*\*\*

Dear \*\*\*:

This is in response to your request dated September 8, 2011, as supplemented by correspondence dated November 18, 2011, October 23, 2012, and October 24, 2012, 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 he received a distribution from IRA X totaling Amount A. 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 the failure of his employer, Company A, to promptly mail Amount A to Financial Institution A within the 60-day rollover period as Taxpayer A had instructed.

Taxpayer A is the owner of IRA X, maintained by Financial Institution A. Due to a family emergency, Taxpayer A took a distribution of Amount A from IRA X on May 5, 2011.

Taxpayer provided consulting services to Company A for which he was owed compensation. Before the end of the 60-day period following the distribution of Amount A, Taxpayer A instructed Company A to mail a check equal to Amount B (an amount greater than Amount A) to Financial Institution A so that Amount A could be deposited back into IRA X. The check from Company A was prepared and dated July 1, 2011 (57 days after the May 5, 2011, distribution). However, Employee A of Company A has confirmed that the payment was delayed because Employee A left for vacation before signing and sending the check. Upon returning from vacation on Friday July 8, Employee A immediately signed and sent the check to Financial Institution A, which deposited it into IRA X on July 11, 2011 (67 days after the May 5, 2011, distribution).

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 Amount A.

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.

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) 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)(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) (related to required minimum distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

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) 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.

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) 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 presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the fact that his employer, Company A, failed to promptly mail Amount A to Financial Institution A within the 60-day rollover period as Taxpayer A had instructed.

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 A from IRA X. Taxpayer A has represented that Amount A has remained in IRA X since being redeposited. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A to IRA X on July 11, 2011, will be considered a valid rollover contribution within the meaning of section 408(d)(3).

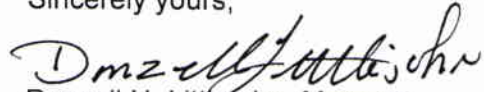
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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 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 \*\*\*\*\* at \*\*\*\*\*  
\*\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

**Enclosures:**

- Deleted copy of ruling letter
- Notice of Intention to Disclose