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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 16 2004

Uniform Issue List: 408.03-00

SE: T: EP: RA: T4

Legend:

Individual A =

Company B =

Company C =

Company D =

Company E =

IRA X =

Amount F =

Amount G =

Amount H =

Amount I =

Date M =

Date N =

Date O =

Dear :

This is in response to your request of March 12, 2003, in which you request a waiver of the 60-day rollover requirement 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 requested:.

Individual A maintained IRA X at Company B. Individual A took a distribution from IRA X of Amount F on Date M.

On Date N, Individual A redeposited Amount G and Amount H with Company C and Company D, respectively. On Date O, Individual A deposited Amount I with Company E. As Individual A had intended, Amount G and Amount I, deposited with Company C and Company E, respectively, were put into IRA accounts. However, Company D placed Amount H into a non-IRA account, contrary to the intent of Individual A. As a result of the complexity of attempting to open three IRA accounts within three days, Individual A was not aware of the mistake made by Company D until it was brought to Individual A's attention by the accountant who was preparing Individual A's income tax return which was more than 60 days after Date M. Individual A made no rollovers from an IRA within the one year period prior to Date M.

Based on the above facts and representations, you request a ruling that the Service waive the 60-day rollover requirement with respect to the distribution of Amount H from IRA X because the failure to waive such requirement would be against equity or good conscience.

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.

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 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; and (4) the time elapsed since the distribution occurred.

Information presented demonstrates that Individual A intended to rollover Amount F, which was distributed from IRA X, into IRA's at three different financial institutions. However, Company D placed Amount H into a non-IRA account, contrary to the intent of Individual A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount H pursuant to section 408(d)(3)(I) of the Code. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount H in cash to an IRA, provided all other requirements of section 408(d)(3) of the Code are otherwise satisfied (except the 60-day requirement). If

these conditions are satisfied, Amount H will be considered a rollover 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 is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions please contact.....

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4