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



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG - 2 2004

U.I.L. 408.03-00

*SE:T:EP:BA:T2*

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Legend:

- Taxpayer A = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- Company M = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Account F = \*\*\*\*\*
- IRA Y = \*\*\*\*\*
- Company N = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your letter dated July 19, 2004, as supplemented by correspondence dated August 10, 2004, 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 penalties of perjury in support of your request.

Taxpayer A, who is      years old, maintains an individual retirement account, IRA X, with Company M. In December      , Taxpayer A asserts that he decided to roll over Amount D, the value of the assets in IRA X, to IRA Y, an IRA he maintains with Company N. To facilitate the roll over from IRA X to IRA Y,

Taxpayer A, on April 29, completed a distribution request form in which he requested that Company M transfer the assets in IRA X to Account F, a non-retirement brokerage account he also maintains with Company M. Taxpayer A asserts that it was his intention to then roll over the IRA assets from Account F to IRA Y.

Taxpayer A asserts that he was away from home from early June to July. Taxpayer A states that he was unaware of the exact date the transfer would occur and did not learn of such until he opened his mail on July and discovered that Amount D had been transferred from IRA X to Account F on May 10, and, by this time, he had missed the 60-day rollover period by two days. Taxpayer A has submitted the May account statement for IRA X account indicating the transfer of Amount D from IRA X on May 10, to Account F. Taxpayer A asserts that he has never had physical possession of Amount D; that he has not used Amount D; and that Amount D continues to be held in Account F, as supported by the July account statement for Account F. Taxpayer A asserts that it was his intention to roll over Amount D to IRA Y within 60 days but did not know when Company M would make the distribution from IRA X. Taxpayer A filed this request for a waiver of the 60-day rollover requirement immediately after discovering that he had missed the 60-day rollover period with respect to Amount D.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D 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)(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 60<sup>th</sup> 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 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 the time during the 1-year period ending in 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)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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.

In this case, Taxpayer A initiated a transfer of Amount D from IRA X to Account F on May 10, as supported by account statements for IRA X and Account F that were submitted with his ruling request. Taxpayer A asserts that he initiated this course of action to facilitate the roll over of assets held in IRA X to IRA Y. Taxpayer A asserts that he was away from home from early June to July , and was not aware of the exact date the transfer would occur.

Taxpayer A asserts that he did not discover that the transfer had been made until he opened his mail on July , and learned that the transfer had been made on May 10, and that he had missed the 60-day period to complete the rollover to IRA Y by two days. Taxpayer A asserts that it was his intention to make a rollover from IRA X to IRA Y; that he has never had physical possession of the IRA X assets; that he has not used Amount D since it has been out of IRA X; and that Amount D continues to be held in Account F as supported by the July account statement for Account F.

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 D from IRA X. Taxpayer is granted a period of 60 days from the date of this ruling to contribute Amount D to IRA Y. 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 D will be considered 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 401(a)(9) of the Code.

This ruling assumes that IRA X and IRA Y satisfy the qualification requirements of Code section 408 at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulation, 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 concerning this ruling, please contact

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Sincerely yours,

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling  
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