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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 29 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =
Amount B =
Amount C =
Amount E =
Amount G =
Amount H =
Amount I =
IRA X =
Non-IRA
Firm U =
Firm V =

Dear

In a letter dated May 20, 2004, 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:

Taxpayer A maintains an Individual Retirement Account , IRA X , with Firm U. The IRA X Trustee is Firm V.

On June 6, and on August 8, Taxpayer A requested and received distributions from IRA X of Amount B and Amount C.

In December Taxpayer A requested Firm U to calculate his required minimum distribution amount for as Firm U had done in previous years, and to complete his Code section 401(a)(9) required minimum distribution for the year by transferring the balance of the required amount from his IRA account to Non-IRA Account Y. Instead, on December 19, . Firm U mailed a check for Amount E directly to Taxpayer A.

On December 26 immediately upon receiving the check for Amount E, which Taxpayer A understood represented the balance of his required minimum distribution amount for as calculated by Firm U, Taxpayer A returned the check to Firm U, since he had originally instructed that the balance of the required distribution should be deposited in Non-IRA Account Y, with Firm U by way of an internal transfer. Taxpayer A had no immediate need for these funds and only requested Firm U to make the December distribution in order to comply with the minimum distribution requirements.

Since Taxpayer A instructed Firm U to calculate and withdraw the correct minimum required distribution amount, Taxpayer A was not aware in December that Amount E, which Firm U had withdrawn from IRA X, was incorrect and actually exceeded his required minimum distribution amount by Amount G, the sum of Amounts B and C.

The error occurred when Firm U calculated Taxpayer A's required minimum distribution for to be Amount E and withdrew the full amount from Taxpayer A's IRA on December 19, In doing so, Firm U failed to take into account Amounts B and C that the Taxpayer had previously withdrawn in June and August Therefore, the correct distribution that Firm U should have made in December in order to complete Taxpayer A's required minimum distribution for was only Amount H.

On April 7, while preparing Taxpayer A's Individual Income Tax Return Form 1040 for Taxpayer A's tax preparer noticed the exceedingly high IRA distribution of Amount I reported on the Form 1099-R that Taxpayer A had received from the trustee of Taxpayer A's IRA X. The tax preparer inquired of Taxpayer A and Firm U and discovered that the financial institution, Firm U, had made an error in processing Taxpayer A's December IRA distribution request.

It was only at this point in time, April that Taxpayer A and his financial institution, Firm U, first became aware that Firm U had made an error in December and withdrew an amount, Amount G, in excess of what was required to be withdrawn from Taxpayer A's IRA X. Firm U informed Taxpayer A that it had consulted with its internal and external counsel to determine whether it could unilaterally correct its error by re-depositing the funds back into Taxpayer A's IRA account in April

After several days, Firm U informed Taxpayer A that since the 60-day rollover period had passed from the December 19, withdrawal, Firm U could not simply reverse its error by re-depositing Amount G from Taxpayer's non-IRA account, where it had remained since December back into his IRA account. However, Firm U acknowledged its error and provided Taxpayer A with a letter to support his waiver request of the Internal Revenue Service.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount G because the failure to waive such requirement would be a hardship and 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.

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.

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).

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 a reliance on Firm U to distribute the correct required minimum distribution to Taxpayer A. As a result of Firm U's error, Amount E was distributed instead of the correct amount, Amount H. By the time Taxpayer A realized the mistake the 60-day rollover period had expired. Upon learning of the error by his financial institution, Taxpayer A took immediate actions to correct the matter.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount G. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount G, except as noted below, to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of any amounts required to be distributed with respect to calendar year

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,

/s/

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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