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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SEP 16 2009

Legend:

Taxpayer A:

IRA X:

Amount M:

Financial
Institution T:

Financial
Institution S:

Form A:

Form B:

Asset A:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Dear :

This is in response to your letters dated February 3 and May 21, 2009, 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 maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution T. Taxpayer A, age 86, asserts that on Date 1, Taxpayer A authorized a direct transfer of Amount M from IRA X to Financial Institution S. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to the error of Financial Institutions S and T in not following the instructions of Taxpayer A.

Financial Institution T as the custodian of assets held by IRA X had resigned, effective Date 2, as trustee and/or custodian of Taxpayer A's IRA X assets.

Financial Institution S, the successor of Financial Institution T, requested information from Taxpayer A and prepared Form A for Taxpayer A's signature. Form A was a traditional IRA transfer and direct rollover request form. Taxpayer A signed Form A on Date 1. Form A identified IRA X and instructed Financial Institution S to carry out a direct transfer of IRA X from Financial Institution T, to Financial Institution S. Directly over Taxpayer A's signature line Form A stated that the transfer of assets is to be executed from fiduciary to fiduciary in such a manner that will not place Taxpayer A in actual or constructive receipt of all or any part of IRA X assets, and further that Financial Institution S would accept the transfer of IRA X. On Date 3 Financial Institution S accepted Taxpayer A's instructions by signing Form A and establishing an IRA and assigning a number to the account. Taxpayer A assumed that Financial Institution S was coordinating the direct transfer of IRA X from Financial Institution T to Financial Institution S.

On Date 4 a letter from Financial Institution T was sent to Taxpayer A advising Taxpayer A to send an attached assignment form, Form B, which appointed Taxpayer A as Financial Institution T's attorney-in-fact to transfer any assets held by the assignor concerning the IRA X share in Asset A, to an asset sponsor. Taxpayer A could not respond because the Date 4 letter provided instructions to send Form B to an asset sponsor address that was left blank by the author of the Date 4 letter. On Date 5 Financial Institution T issued a second letter to Taxpayer

A requesting that Taxpayer A send an attached assignment form, Form B, and in this letter did provide the address of the asset sponsor which was missing in the Date 4 letter. The Date 5 letter was sent four months after Date 1.

Taxpayer A first learned that the direct transfer of IRA X he requested by signing Form A on Date 1 never occurred when he received a form 1099-R from Financial Institution T which reported a distribution to Taxpayer A in Amount M for 2008. Shortly thereafter, Taxpayer A received a letter from Financial Institution T dated Date 6, informing him that since the IRA X assets which were the subject of the Form A transfer were distributed to Taxpayer A on Date 4 (the date of the defective assignment) and that Date 4 was outside the 60-day rollover period, the rollover could not be accomplished.

Taxpayer A has not exercised his power of attorney to assign the IRA X shares in Asset A and thus he further represents that he has not used Amount M for any other purpose.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M, contained in section 408(d)(3) of the Code ("the Code").

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)(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)(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)(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.

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), 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 rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to the error of Financial Institutions S and T in not following the instructions of Taxpayer A.

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 to

Taxpayer A of Amount M. 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 M to an 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 the Code section 401(a)(9) minimum required distributions.

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.

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.

If you wish to inquire about this ruling, please contact

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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