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

200950056

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SEP 16 2009

Legend:

Taxpayer A:

Amount M:

IRA X :

Bank S:

Bank F:

Bank F Statement Period 8:

Date 1:

Date 2:

Month 12:

Dear :

This is in response to your letters dated December 3, 2008, March 24, 2009, and August 5, 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, age 66, had an Individual Retirement Arrangement (IRA), IRA X, which was maintained by Bank S. Taxpayer A asserts that on Date 2 Taxpayer A received a distribution of Amount M from IRA X and that her 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 Bank F's error in failing to follow Taxpayer A's instructions to establish a rollover IRA.

Taxpayer A intended to transfer IRA X into a new IRA at Bank F with which she had maintained other accounts. On Date 1 Taxpayer A completed a Bank F on-line application to open what she believed to be an IRA account. In the instructions section of the on-line application Taxpayer A wrote "the initial deposit will arrive as an IRA transfer from (Bank S) in a few days... transfer interest...[from the account ]... minus tax withholding...to my [Bank F] checking account...Call me to find out how much the withholding should be."

Taxpayer A believed she was completing an application for an IRA with Bank F which would then receive the Bank S transfer as a direct transfer of IRA X and instructed Bank F to call her about how interest on the IRA account should be handled. Contrary to Taxpayer A's instructions,Taxpayer A never received the telephone call from Bank F for follow up communication which would have alerted Bank F of its error. In addition, the Date 2 transfer was noted as a "transfer" on the transaction detail for the Bank F Statement Period 8 which reported on the month in which the Date 2 transfer occurred. The Date 2 transfer did not appear as a separate account in the statement summary where Taxpayer A's other accounts at Bank F appeared. During the following three months, Taxpayer A was frequently out-of-state providing elderly care for her 96 and 97 year-old parents. The three Bank F statements for those periods after Statement Period 8 did not display the transfer as an account.

During Month 12, within a month after the expiration of the 60-day rollover period, Taxpayer A telephoned a Bank F representative to inquire why interest income was not being deposited into her checking account per her instructions in her on-line application and discovered for the first time that the Date 2 transfer was not transferred to an IRA account but rather was transferred to a non-IRA CD account. The 60-day rollover period had expired before this discovery and the Bank F representative informed Taxpayer A that they could not change the account to an IRA account.

Taxpayer A further represents that she 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.

Taxpayer A asserts that on Date 2 Taxpayer A received a distribution of Amount M from IRA X and that her 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 Bank F's error in failing to follow Taxpayer A's instructions to establish a rollover IRA.

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 M from IRA X. 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.

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 have any questions, please contact XXX

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