

LTR 201013067, January 8, 2010

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Uniform Issue List No. 0408.03-00

[Code Sec. 408]

Individual retirement accounts; Rollover contributions.

This is in response to letters dated May 11, September 18, October 14, and November 30, 2009, submitted on your behalf by your authorized representative, 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 Individual Retirement Accounts (IRAs), IRA X, and IRA Y, with Financial Institution S. Taxpayer A, age 61, asserts that on Date 2, Taxpayer A authorized distributions of Amounts M and N from IRA X and Y, respectively, held by Financial Institution S. Taxpayer A asserts that his failure to accomplish a rollover of Amounts M and N within the 60-day period prescribed by section 408(d)(3) of the Code was due to the incorrect advice of Financial Institution H.

During Month 7, Taxpayer A was presented with an opportunity to invest in a limited partnership, Financial Institution H. Taxpayer A discussed moving funds from IRA X and IRA Y to Financial Institution H with a representative of Financial Institution S and discussed the Financial Institution H requirement of a contribution by Date 1 (the “admission deadline”).

As the admission deadline approached, Taxpayer A learned that Financial Institution S would not be able to distribute the IRA X and IRA Y funds by Date 1. Taxpayer A conferred with representatives of Financial Institution H about his intentions that his investment in Financial Institution H be established as an IRA rollover account with funds from IRAs X and Y. Taxpayer A was advised by a representative of Financial Institution H that he could use his personal non-IRA funds to make the investment in Financial Institution H in order to meet the admission deadline and then afterwards he could restructure the investment as an investment from his IRA when the IRA funds became available. Taxpayer A subsequently received checks dated Date 2 distributing Amounts M and N from IRAs X and Y.

In an attempt to isolate and hold Amounts M and N available for restructuring the investment in Financial institution H as a rollover IRA, on Date 3, Taxpayer A deposited Amounts M and N in Account C at Financial Institution C.

On Date 4 Fund Manager R at Financial Institution H wrote Taxpayer A to inform him that he must maintain his account at Financial institution H as an IRA account and informed him that their investor relations department would mail him subscription documents to accomplish this goal. However, on Date 5, which was approximately the 60th day after the distributions of IRA X and IRA Y funds to Taxpayer A, Fund Manager R wrote in an e-mail to Taxpayer A that Financial Institution H was not able to restructure the investment as had been planned until Date 6 which was approximately 10 days after the expiration of the 60-day period.

On Date 6 Taxpayer A spoke to his accountant seeking advice and first learned that the 60-day rollover period already had expired.

Taxpayer A has not has not used Amounts M and N for any other purposes.

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 Amounts M and N 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 Amounts M and N within the 60-day period prescribed by section 408(d)(3) of the Code was due to the incorrect advice of Financial Institution H.

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 Amounts M and N. 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 Amounts M and N 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).

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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, Manager, Employee Plans Technical Group 3.