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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 18 2005

U.I.L. 408.03-00

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*T:EP:RA:T2*

Legend:

- Taxpayer A = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- Company P = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Amount E = \*\*\*\*\*
- Amount F = \*\*\*\*\*
- Company M = \*\*\*\*\*

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

This is in response to your letter dated December 15, 2004, as supplemented by correspondence dated February 25, 2005, 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 penalties of perjury in support of your request.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Company P. Taxpayer A states that on August 6, 2004, he requested a distribution from IRA X in the amount of Amount D. Taxpayer A further states that on August 10, he requested another distribution from IRA X in the amount of

Amount E. In a letter dated September 25, 2004 to Company M, Taxpayer A's financial advisor, Taxpayer A enclosed a check in the amount of Amount F (the sum of Amount D and Amount E) and directed that Company M reinvest these funds within the 60-day rollover period. Taxpayer A submitted a copy of the check dated September 25, 2004, in the amount of Amount D, which is made payable to Company P. The "note" on the check indicates that the amount represents a reinvestment of the August 6 and August 10, 2004 distributions and includes the IRA X account number into which the check proceeds should be deposited. Taxpayer A mailed the check and gave instructions to Company M to reinvest the proceeds into IRA X within the 60-day rollover period for the two distributions from IRA X. Taxpayer A, however, failed to include Company M's suite number in the address and Taxpayer A states that he received the returned letter on or about October 20, 2004.

Upon receipt of the letter, Taxpayer A states that on October 20, 2004, he again attempted to mail a check to Company P in the amount of Amount F, but forgot to endorse the check. Company P returned the check to him under a letter dated October 25, 2004. In an effort to complete the rollover, Taxpayer A, on October 26, 2004, wired Amount F to IRA X. Documentation submitted by Taxpayer A with this request shows that a transfer in the amount of Amount F was made to IRA X on October 26, 2004. The errors committed in mailing the check to Company P resulted in Amount F not being rolled over within the 60-day rollover period.

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 and Amount E 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 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 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 sections 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.

The information submitted in this case shows that Taxpayer A received a distribution from IRA X on August 6, 2004 and August 10, 2004, in the amount of Amount D and Amount E, respectively. Documentation submitted by Taxpayer A also shows that within the 60-day rollover period, he demonstrated his intent to complete a rollover as indicated in his September 25, 2004 letter to Company M in which he included a check in the amount of Amount F (the sum of Amount D and Amount E), gave specific instructions to Company M to reinvest Amount F within the 60-day rollover period, and provided the IRA X account number into which the proceeds should be deposited. Even though Amount F was not redeposited into IRA X within the 60-day rollover period because of errors committed in mailing the check to Company M, Taxpayer A's letter of September

25, 2004 to Company M demonstrates his intent to preserve Amount F as part of his retirement savings.

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 and Amount E from IRA X. Documentation submitted by Taxpayer A shows that on October 26, 2004, Amount F (the sum of Amount D and Amount E) was transferred to IRA X. 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 F will be considered a 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 to Taxpayer A by section 401(a)(9) of the Code.

This ruling assumes that IRA X satisfies 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 regulations, 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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact  
\*\*\*\*\*SE:T:EP:RA:T2.

Sincerely yours,

**(signed) JOYCE E. FLOYD**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling  
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