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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

U.I.L. 408.03-00

NOV 8 2004

*T:EP:BA:TD*

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Legend:

- Taxpayer A = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- Fund E = \*\*\*\*\*
- Company M = \*\*\*\*\*
- Fund F = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Account H = \*\*\*\*\*

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

This is in response to your letter dated October 25, 2004, submitted on your behalf by your authorized representative, in which you request a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Company M. IRA X is currently invested in one or more mutual funds. Fund E is one of the mutual funds that hold some of the IRA X assets. On [REDACTED] using Company M's internet website, Taxpayer A electronically transferred Amount D from Fund E in IRA X to Fund F which has a more conservative investment strategy. Fund F is also offered by Company M. Taxpayer A states that she believed Fund F would also be held within IRA X. Taxpayer A states that she is inexperienced in electronic transfers and did not realize that the transfer would result in a distribution from IRA X. Taxpayer A states that it was her intention to transfer between the two mutual funds, Fund E and Fund F, and that such transaction would remain within her IRA. Fund F is not held in IRA X, but held in Fund F. The account statement submitted by Taxpayer A indicates that Fund F is an investment of Account H, an individual account Taxpayer A also maintains with Company M.

Taxpayer A asserts that the Company M website did not provide any warnings or cautionary directions concerning the potential tax implications of this transaction. The promotional material issued by Company M describes Fund F as the "Company M Target Retirement [REDACTED] Fund" and does not indicate that it is a non-tax deferred fund. On [REDACTED] during a discussion with Company M personnel, Taxpayer A learned that Amount D was not held in an investment fund within IRA X. Taxpayer A discovered the error approximately ten days past the 60-day rollover period. Taxpayer A asserts that Amount D continues to be invested in Fund F and that she has not used Amount D since it has been held in Fund F. Taxpayer A has submitted documentation that shows the transfer from Fund E in IRA X to Fund F on [REDACTED] and the account statement for Fund F as of [REDACTED] that shows that Amount D remains invested in that fund. Further, Taxpayer A submitted her request for a ruling shortly after discovering that Amount D was not invested in an IRA.

Based on the above 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 D 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)(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 property 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 includable 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 includable in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(l) 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 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 occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(l) 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)(l), 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.

From the documentation submitted, it appears that Taxpayer A, using Company M's website, initiated an internet transfer of Amount D from Fund E in IRA X to Fund F, a fund [REDACTED] believed would be held in IRA X. The promotional material provided by Company M and submitted by Taxpayer A with this request

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describes Fund F as the "Company M Target Retirement [REDACTED] Fund". Taxpayer A states that [REDACTED] is inexperienced in electronic transfers and that there is nothing in the promotional material that describes this fund as a non-tax deferred fund. Further, Taxpayer A asserts that Company M's website did not provide any warnings or cautionary directions concerning the potential tax implications of Taxpayer A's transaction. Taxpayer A learned of this mistake during a discussion with Company M personnel and up to this time had no reason to believe that Amount D had not been properly transferred to a fund that was held in IRA X. When Taxpayer A discovered that Amount D was not invested in a mutual fund within IRA X, the 60-day rollover period had expired by ten days. Taxpayer A asserts that she has not used Amount D since it has been invested in Fund F and has submitted recent account statements that show that Amount D continues to be invested in Fund F. Taxpayer A filed for a waiver of the 60-day rollover period shortly after discovering that Amount D had not been transferred to another mutual fund within her IRA.

Therefore, pursuant to section 408(d)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all other requirements of Code section 408(a) of the Code, except the 60-day rollover requirement, are met with respect to contribution, Amount D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

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 ruling assumes that IRA X meets the requirements of Code section 408(a) at all times relevant to this transaction.

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.

If you have any questions about this ruling, please contact

\*\*\*\*\*SE:T:EP:RA:T2.

Sincerely yours,

**(signed) JOYCE E. FLOYD**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2