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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Index No. 408.03-00

JUL 9 - 2004

SE:T:EP:RA:T2

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LEGEND:

Taxpayer A = ***

IRA X = ***

Company M = ***

Amount D = ***

Amount E = ***

Amount F = ***

Amount G = ***

Dear ***:

This is in response to a letter dated ***, in which you request a ruling concerning the waiver of the 60-day rollover requirement, as permitted by Internal Revenue Code (the "Code") section 408(d)(3).

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

In ***, Taxpayer A, age ***, began a series of withdrawals from IRA X using a methodology that was not a methodology described in Revenue Ruling 2002-62, 2002-

62 I.R.B. 710. About the same time, Taxpayer requested a ruling that the desired methodology constituted a series of substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code. In ***, the Internal Revenue Service subsequently ruled that the requested methodology did not constitute a series of substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code. The annual distribution amount determined fo under the requested methodology is Amount D.

Taxpayer A has redetermined the annual distribution from IRA X for *** based on the IRA X account balance of Amount E, a life expectancy obtained from the single life expectancy table contained in section 1.401(a)(9)-9, Q&A-1 of the Income Tax Regulations based upon Taxpayer A's age in ***, and a 3.68 interest rate assumption. The amount of this recalculated distribution was Amount F. Taxpayer A wants to redeposit Amount G, the difference between Amount D and Amount F, back into IRA X using the rollover rules described in Code section 408(d)(3). Amount G has been out of IRA X for more than 60 days.

Based on the foregoing facts and representations, the following ruling has been requested:

> That the Service waive the 60-day rollover requirement with respect to the distribution of Amount G 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 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)(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 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, 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.

Revenue Ruling 2002-62 modifies Q&A-12 of Notice 89-25. Revenue Ruling 2002-62 provides, among other things, that payments are considered to substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Notice 89-25). The fixed amortization method provides that the annual payment for each year is determined by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each subsequent year.

Section 2.02 of Revenue Ruling 2002-62 contains rules that apply to each of the three methods of calculating a series of substantially equal periodic payments. Section 2.02 provides, in general, that payments will constitute a series of substantially equal periodic payments if the payments are determined by using: (a) the uniform lifetime tables in Appendix A of Revenue Ruling 2002-62, the single life expectancy table in section 1.401(a)(9)-9, Q&A-1 of the regulations, or the joint and last survivor table in section

1.401(a)(9)-9, Q&A-3 of the regulations; (b) an interest rate that is not more than 120 percent of the federal mid-term rate, and (c) a reasonable manner of determining the account balance.

In this case, and based on the information submitted, Taxpayer A began to receive payments from IRA X using a methodology for which a ruling letter was requested and that was subsequently disapproved by the Service. Subsequent to the adverse ruling letter, the taxpayer recomputed the distribution using a methodology that the Service regards as constituting a series of substantially equal periodic payments.

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 G from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling letter to redeposit Amount G back into IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day rollover requirement, are met with respect to such contribution, this amount will be considered a valid rollover contribution within the meaning of Code section 408(d)(3).

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

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.

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

If you have any questions regarding this ruling, please contact ***, ***, ***, at ***.

Sincerely,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose Form 437