



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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U.I.L. 408.03-00

JUN 29 2004

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Legend:

- Taxpayer A = *****
- IRA X = *****
- Bank B = *****
- Amount D = *****
- Bank K = *****
- Amount E = *****
- Account F = *****
- Individual M = *****
- City Q = *****
- City C = *****

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Dear*****:

This is in response to your letter dated May 5, 2004, as supplemented by correspondence dated June 10 and June 22, 2004, 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 resided and worked in City Q. Taxpayer A maintained IRA X, an individual retirement account (IRA) with Bank B. In Taxpayer A was diagnosed with cancer and began extensive chemotherapy. In November, Individual M, Taxpayer A's daughter, realized that Taxpayer A was no longer able to live alone or to take care of her personal finances. Individual M then requested that Taxpayer A move in with her in City C.

In connection with the move, in early November Individual M began to consolidate all of Taxpayer A's bank accounts and move them to a banking institution in City C. One such account that Individual M closed was IRA X held at Bank B. Taxpayer A asserts that she was not alert enough to inform Individual M that the Bank B account was an IRA and further asserts that Individual M was not sophisticated enough in these matters to realize that the Bank B account was an IRA.

Taxpayer A asserts that it was never her intention to take a distribution from IRA X. Account information submitted with this request indicates that Amount E was deposited in Account F, a checking account maintained with Bank K, on November 24, Taxpayer A asserts that Amount E includes Amount D and other checks. The account statement submitted with this request to support that Amount D was deposited into Account F also reveals that Account F had a zero balance prior to the deposit of Amount E. Taxpayer A asserts that the IRA X funds continues to be held in Account F and that she has not otherwise used any of the IRA X assets. Taxpayer A further asserts that she did not become aware that a distribution was made from IRA X until she met with her accountant in April to prepare her tax return for the tax year. Bank B issued a Form 1099-R to Taxpayer A showing that a distribution in the amount of Amount D was made from IRA X in tax year

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 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 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 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 the time during the 1-year period ending in 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 section 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 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 submitted in this case indicates that a distribution in the amount of Amount D was made to Taxpayer A from IRA X in Documentation submitted also indicates that a deposit in the amount of Amount E was made to Account F, a checking account maintained with Bank K, on November 24, Taxpayer A asserts that her medical condition caused her to fail to inform Individual M that the Bank B account was an IRA and that it was never her intention to take a distribution from IRA X. Taxpayer A asserts that the IRA X funds continues to be held in Account F and that she has not otherwise used any of the IRA X funds since they have been in Account F.

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 from IRA X. Taxpayer A is granted a period of sixty (60) days from the issuance of this ruling letter to rollover Amount D to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, this amount 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 here in under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling does not authorize the rollover of the amounts that are required to be distributed by Code section 401(a)(9).

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

This ruling 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.

A copy of this ruling has been sent to your authorized representative pursuant to the provision of a Power of Attorney on file in this office.

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If you have any questions about this ruling, please contact
*****S:T:EP:RA:T2.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted Copy of the ruling letter
Notice of Intention to Disclose