



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 30 2004

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Legend:

- Taxpayer A = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- Bank B = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Bank J = \*\*\*\*\*
- Bank K = \*\*\*\*\*
- Bank L = \*\*\*\*\*
- Account F = \*\*\*\*\*

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

This is in response to your letter dated May 19, 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 maintains individual retirement arrangements (IRAs) at various banks in her local community. Taxpayer A's IRAs are typically invested in certificates of deposit. Taxpayer A has in the past rolled over IRA funds from one bank to another to avoid exceeding FDIC coverage limits and to secure higher yielding certificates of deposit.

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On October 22, Taxpayer A withdrew Amount D from IRA X maintained at Bank B. Taxpayer A asserts that it was her intention at that time to rollover Amount D to another IRA. Taxpayer A underwent surgery on September 19, that restricted her ability to drive and travel. Taxpayer A attempted to deposit Amount D into a new IRA on November 20, at Bank J. Taxpayer A asserts that the person at Bank J who was qualified to establish IRAs was out of the office. Taxpayer A further asserts that a week later she again contacted Bank J to attempt the rollover but the responsible person was still not available. Taxpayer A states that because of her travel restrictions, she was not able to reattempt to rollover Amount D to an IRA until December 23,

On December 23, the branch manager of Bank K determined that it could not accept Amount D as a rollover contribution because the 60-day rollover period had expired. On December 31, Taxpayer A deposited Amount D into Account F, a checking account, at Bank L. Taxpayer A asserts that Amount D has remained in Account F to this date and that she has not otherwise used any of the IRA X funds since they have been deposited in Account F. Account documentation submitted in support of this ruling request indicate that Amount D was distributed from IRA X as evidenced by the Form 1099-R issued by Bank B and that Amount D was deposited in Account F on December 31, as evidenced by the Bank L deposit slip.

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 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

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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 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 on October 22. Documentation submitted also indicates that a deposit in the amount of Amount D was made to Account F, a checking account maintained with Bank L, on December 31. Taxpayer A asserts that it was her intention at the time she withdrew Amount D from IRA X to make a rollover to another IRA. Taxpayer A states that she attempted to complete a rollover to another IRA during the 60-day time period at Bank J and Bank K. Taxpayer A asserts that because of the travel restrictions posed by her medical condition, she was unable to complete the rollover within the 60-day time period. 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.

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Therefore, pursuant to section 408(d)(3)(l) 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 in accordance with a Power of Attorney (Form 2848) on file in this office.

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

Enclosures:

Deleted Copy of the ruling letter  
Notice of Intention to Disclose