

200527024



TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

APR 15 2005

SE:T:EP:RA:TI

UIL Nos. 408.00-00

\*\*\*\*\*
\*\*\*\*\*
\*\*\*\*\*

- Legend: Taxpayer = \*\*\*\*\*
Bank = \*\*\*\*\*
IRA = \*\*\*\*\*
Amount G = \*\*\*\*\*
Spouse = \*\*\*\*\*

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

This is in response to your letter dated June 15, 2004, as supplemented by additional correspondence dated December 23, 2004 and February 10, 2005, 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 by you under penalty of perjury in support of the ruling requested:

The Taxpayer was the owner of the individual retirement arrangement (the "IRA") described above. The above-named Bank was the custodian of the Taxpayer's IRA account. A broker representing the Bank provided the Taxpayer with financial advice pertaining to the investments made within the IRA.

In November of 2003, the Taxpayer was informed by a Bank representative that the certificate of deposit ("CD") she had purchased from the Bank as an IRA investment was due to mature. The Bank representative set up a meeting with the Taxpayer to discuss investment options for her IRA, during which the Taxpayer decided to close out the CD and invest in securities. The Taxpayer represents that she was misinformed about her investment options, that she intended to keep her money in the IRA, and that

due to a misunderstanding, the Bank's representative caused Amount G to be distributed from the Taxpayer's IRA account and deposited into her personal checking account. The Taxpayer states that she never intended to close out her IRA. Amount G remains in the Taxpayer's personal checking account. The Taxpayer further states that the Bank's representative did not provide any explanation of the income tax consequences of taking a distribution of Amount G from her IRA. By the time the Taxpayer realized that Amount G had been distributed from her IRA and that a taxable event had occurred, more than 60 days had elapsed.

Based on the facts and representations presented above, your authorized representative has filed a request that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amount G, because the failure to waive such requirement would be against equity or good conscience.

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) 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 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 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 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) 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 occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 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.

In this case, the Taxpayer relied on the Bank's representative to transfer her IRA assets from the matured CD issued by the Bank into other investments, within her IRA. Due to an error by the Bank's (i.e., the IRA Custodian's) representative, Amount G was distributed from the Taxpayer's IRA and deposited in her personal checking account.

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 the Taxpayer's IRA Account into her personal checking account. The Taxpayer is granted a period of 60 days from the date of issuance of this ruling letter to contribute all or a portion of Amount G into an IRA. Provided all other requirements of Code section 408(d)(3) except the 60-day requirement are met with respect to all or a portion of Amount G, that amount will be considered a rollover contribution within the meaning of section 408(d)(3).

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

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.

A copy of this ruling letter has been provided to the Taxpayer's authorized representative in accordance with a Power of Attorney currently on file in this office.

If you wish to inquire about this ruling, please contact \*\*\*\*\*  
\*\*\*\*\* \*\*\*\*\* . Please address all correspondence  
to SE:T:EP:RA:T1.

Sincerely,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose (Notice 437)