



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

200540019

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 11 2005

U.I.L. 408.03-00

SE:T:EP:PA:T2

Legend:

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

Dear *****.

This is in response to your letter dated April 1, 2005, as supplemented by correspondence dated May 18, 2005, 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, a 75 years old individual, maintained an individual retirement arrangement, IRA X, with Bank B. On October 25, 2004, Taxpayer A closed IRA X and withdrew Amount E from that account. Documentation submitted by Taxpayer A indicates that Amount D (Amount E less the required minimum distribution amount) was deposited into Account K, a savings account, at Bank C on October 28, 2004.

Individual M, Taxpayer A's tax preparer, represents that he has made "house calls" for the last two years to Taxpayer A's residence out of concern for her safety due to her short and long term memory issues. It has been represented that Taxpayer A suffers from dementia, senility and is currently being tested for Alzheimer's disease. Individual M further represents that upon his visit in early 2005, he noticed a Form 1099-R from Bank B showing that a distribution of Amount E was made from IRA X to Taxpayer A in 2004. Upon a further review of Taxpayer A's Bank B account statements, he noticed that she withdrew Amount F from a savings account she also maintains with Bank B. Individual M states that he asked Taxpayer A about the withdrawals from IRA X and her savings account and she could not recall the withdrawals or what she did with the funds.

Individual M discovered that Taxpayer A had another account, Account K, a savings account at Bank C, that she did not recall having. Individual M noticed that Amount D and Amount F were deposited into Account K on October 28, 2004 and October 19, 2004, respectively. Individual M asserts that when he talked to the Bank C officials and asked them to put Amount D into rollover account, he was told that it could not be deposited into rollover account because 60-day period had expired.

Information submitted on behalf of Taxpayer A with this request indicates that on October 25, 2004, Amount E was withdrawn from IRA X and that Amount D, (Amount E less the required minimum distribution amount) was deposited into Account K on October 28, 2004. A recent account statement for Account K that was submitted in support of the ruling request shows that it has a balance in excess of Amount D. It has been represented that Taxpayer A has more than adequate monthly retirement income as well as savings accounts so there was no need to take a total distribution from IRA X and close the account. The account documentation submitted on behalf of Taxpayer A shows very little withdrawal activity with respect to IRA X, other than the amounts necessary to satisfy section 401(a)(9) of the Code. Individual M asserts that Taxpayer A's health problems caused her to fail to realize the consequences of taking a total distribution from IRA X and further from realizing that such amount should be rolled over to another IRA within 60 days.

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)(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 any 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 sections 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 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, documentation submitted by Taxpayer A indicates that she closed IRA X on October 25, 2004 and received a distribution in the amount of Amount E. Documentation submitted also shows that Amount E (Amount D less the required minimum distribution amount), was deposited into Account K, a savings account at Bank C, on October 28, 2004. Due to health reasons, Taxpayer A failed to realize the consequences of closing IRA X and of realizing that once IRA X was closed that she had 60-days in which to roll over such funds to another IRA. Documentation submitted in with this request shows that prior to receiving a total distribution from IRA X, the only withdrawals from IRA X were distributions of amounts necessary to satisfy Code section 401(a)(9). Amount D continues to be held in Account K as supported by recent account statements submitted on Taxpayer A's behalf that show a balance in excess of Amount D.

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 60 days from the date of this ruling to contribute 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, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Taxpayer A is over 70 ½ and therefore has attained her required beginning date for purposes of Code section 401(a)(9). In this regard, this ruling does not authorize the rollover of any portion of Amount D that may be required to be distributed to Taxpayer A by Code section 401(a)(9).

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

200540019

If you have any questions concerning this ruling, please contact

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

Sincerely yours,

Joyce E. Floyd

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice 437