



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200433018

U.I.L. 408.03-00

MAY 21 2004
SET:EP:RA:T2

Legend:

Taxpayer A =

Company N =

IRA X =

Amount D =

Form F =

Dear

This is in response to your letter dated September 6, 2003, as supplemented by correspondence dated November 22, 2003, April 25, 2004, May 12, 2004, and May 17, 2004, 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 the ruling requested:

Taxpayer A maintained IRA X with Company N. On Taxpayer A executed Form F, Company N's IRA distribution form indicating that she desired to receive a distribution from IRA X. Information contained on Form F, as submitted with this ruling request, indicate that Taxpayer A is over age 59 ½; that Federal income taxes should not be withheld from the IRA distribution; that the IRA distribution will be re-invested; and that the IRA distribution would be made "on demand". Pursuant to Form N, "on demand" means that the IRA

owner will notify the financial consultant when a cash distribution is desired. Taxpayer A checked and initialed the "on demand" option with respect to the distribution from IRA X.

On [redacted] Taxpayer A received a check in the amount of Amount D from Company N, even though she had not given Company N a date as to when she desired to receive the distribution from IRA X as was stipulated on her executed Form F. From [redacted] through [redacted] Taxpayer A worked with representatives of Company N to correct the distribution. During this period Taxpayer A states that she was informed by representatives of Company N that she should keep the check until Company N completed its review of the matter. In [redacted] Taxpayer A received a letter from Company N indicating that it considered the matter closed. Company N reissued a check, dated [redacted] to Taxpayer A in the amount of Amount D since the original check received in [redacted] had not been cashed by Taxpayer A.

Taxpayer A's request for a waiver of the 60-day rollover requirement was made shortly after Company N made its final decision with respect to the distribution from IRA X. Taxpayer A has not cashed either check she received from Company N.

Based upon the above facts and representation, Taxpayer A requests 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 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 section 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.

The information submitted by Taxpayer A indicates that she did complete Form F to initiate a distribution from IRA X and that her intent was to re-invest such distribution. Form F, as completed by Taxpayer A, also indicates that she would contact the financial consultant as to when the distribution from IRA X was to be made. In spite of Taxpayer A's instructions on Form F, Company N made a distribution of Amount D to Taxpayer A in _____ From _____ to _____

Taxpayer A attempted to resolve this matter with Company N. During this period, Taxpayer A asserts that she was advised by Company N to keep the check until the distribution matter was resolved. The check in the amount of Amount D is in Taxpayer A's possession and she has not cashed or

otherwise negotiated the check. Taxpayer A's request for a waiver of the 60-day rollover requirement was made shortly after Company N decided that it could not correct the distribution.

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 contribute Amount D into 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 herein 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 amounts that are required to be distributed by Code section 401(a)(9).

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.

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

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intension to Disclose