



TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

200453019

SEP 30 2004

U.I.L. 408.03-00

SET:EP:PA:T 2

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Legend:

- Taxpayer A = \*\*\*\*\*
IRA X = \*\*\*\*\*
Company F = \*\*\*\*\*
Amount D = \*\*\*\*\*
Account G = \*\*\*\*\*
Bank B = \*\*\*\*\*
Company M = \*\*\*\*\*
IRA Y = \*\*\*\*\*

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

This is in response to your letter dated July 26, 2004, as supplemented by correspondence dated September 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.

In January 2003, Taxpayer A states that he learned from Company F that he would have to seek another advisor to handle the investment of the individual retirement arrangement, IRA X, he maintained with Company F because it was no longer able to provide the professional investment services for his IRA. Taxpayer A received a check in the amount of Amount D from Company F on or about January [REDACTED]. Taxpayer A asserts that the check he received from Company F was payable to the order of "Custodian Rollover IRA FBO Taxpayer A".

Taxpayer A asserts that he discussed this matter with a bank officer at Bank B who informed him that the distribution from IRA X needed to be rolled over to another IRA. Documentation submitted with this request for a ruling indicates that Taxpayer A opened a money market, Account G, with Bank B and on January [REDACTED] deposited Amount D into this account.

In October [REDACTED], Taxpayer A states that he found a financial advisor, Company M, and requested that Bank B transfer Amount D to IRA Y, the new IRA he established with Company M on October [REDACTED]. Account documentation submitted by Taxpayer A indicates that a deposit described as a "deposit rollover" was made to IRA Y on October [REDACTED]. (The initial deposit in IRA Y consisted of the distribution from IRA X and certain amounts Taxpayer A received from an account he maintained with his employer. Taxpayer A has removed those amounts from IRA Y so that IRA Y now only contains Amount D, the amount of the distribution from IRA X, and any earnings on that amount).

Taxpayer A states that he was not aware that Amount D had not been deposited in an IRA at Bank B and discovered this mistake after he received a Form 1099-R from Company F that showed the distribution of Amount D from IRA X. Taxpayer A states that he then contacted Bank B and learned that Account G was a money market account and not an IRA. Taxpayer A further states that it was his intent to complete a rollover and maintain Amount D for his retirement. Taxpayer A stated that he did not use Amount D while it was in Account G, and that Amount D was transferred to a new IRA, IRA Y, as soon as he found a new financial advisor, Company M. Taxpayer A has also submitted account statements for IRA Y that show that Amount D remains in IRA Y.

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 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 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 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 Taxpayer A received a distribution in the amount of Amount D from IRA X in [REDACTED] as supported by the Form 1099-R issued by Company F. Taxpayer A asserts that prior to depositing this check he discussed the matter with Bank B personnel who advised him that Amount D needed to be rolled over to another IRA. Taxpayer A states that it was his intention to roll over Amount D to an IRA and that the bank officer at Bank B knew that Amount D should have been deposited in an IRA because the check issued by Company F indicated that it was payable to a "custodian rollover IRA FBO Taxpayer A". Taxpayer A submitted account statements verifying that Amount D was deposited into Account G at Bank B shortly after he received the check.

Documentation submitted by Taxpayer A also shows that Amount D was subsequently transferred in October [REDACTED] to IRA Y, a new IRA Taxpayer A opened with Company M. Taxpayer A states that he was not aware while Amount D was in Account G that this account was not an IRA and discovered this mistake in January [REDACTED], subsequent to the date Amount D was transferred to IRA Y. Taxpayer A states that it was his intent to complete a rollover and maintain Amount D for his retirement. Taxpayer A further states that he did not use Amount D while it was in Account G and has submitted current account statements for IRA Y indicating that Amount D remains in IRA Y.

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. Documentation submitted in this case indicates that in October [REDACTED] Taxpayer A established IRA Y with Company M and transferred Amount D to that 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.

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

This ruling assumes that IRA X and IRA Y satisfy the qualification requirements of Code section 408 at all times relevant to this transaction.

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.

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**200453019**

If you have any questions concerning 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 letter ruling  
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