

200444027



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

U.I.L. 408.03-00

AUG 5 2004

T:EP:RA:T2

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Company M =

Amount D =

Amount E =

Amount F =

Account G =

Bank B =

Account H =

Dear

This letter is in response to a request for a private letter ruling dated June 30, 2004, as supplemented by correspondence dated July 27, 2004, July 29, 2004, and July 30, 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") with respect to distributions from individual retirement arrangements (IRA).

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A, who is years old, and Taxpayer B, who is years, maintain IRA X and IRA Y, respectively, with Company M. This ruling pertains to the withdrawal of Amount D, Amount E, and Amount F from IRA X and IRA Y as more fully explained below. In addition, both taxpayers currently receive monthly distributions from their respective IRAs.

Account documentation submitted with your request for a ruling indicate (1) that on March 10, Taxpayer A withdrew Amount D from IRA X and, on March 13, , deposited this amount into Account G, a checking account in the names of Taxpayer A and Taxpayer B maintained at Bank B; (2) that on May 30, , Amount E and Amount F were withdrawn from IRA X and IRA Y, respectively, and on June 3, , deposited into Account G; and (3) that on April 22, , Amount D, Amount E and Amount F were transferred from Account G to Account H, a savings account in the names of Taxpayer A and Taxpayer B maintained at Bank B. Taxpayer A and Taxpayer B assert that they were advised by their financial advisor to not make withdrawals from their IRAs unless they were planning to rollover such amounts to other IRAs. Because of health problems, Taxpayer A asserts that he was unable to fully understand the consequences of completing a rollover. Taxpayer A and Taxpayer B assert that they have not used any of the amounts distributed from IRA X and IRA Y and that such distributions remain in Account H, as supported by a recent account statement submitted with this request.

Based upon the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D, Amount E, and Amount F from IRA X and IRA Y.

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 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 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) of the Code where 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 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 Taxpayer A and Taxpayer B received distributions in the amounts of Amount D, Amount E, and Amount F from IRA X and IRA Y, respectively. Account statements for Account G indicate that these amounts were deposited into Account G within days of being distributed from IRA X and IRA Y. Further, recent account statements for Account G and Account H show that these amounts were transferred from Account G to Account H on April 22, . Taxpayer A and Taxpayer B assert that they have not used these amounts since they have been in Account G and Account H, and that such amounts continue to be held in Account H.

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, Amount E and Amount F from IRA X and IRA Y, respectively. Taxpayer A and Taxpayer B are granted a period of 60 days from the date of this ruling to contribute Amount D, Amount E and Amount F to IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount D, Amount E and Amount F will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

According to the information submitted with this request for a ruling, Taxpayer B has attained her required beginning date within the meaning of Code section 401(a)(9). In this regard, this ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer B by section 401(a)(9) of the Code. Thus, the conclusions reached in this ruling apply only to Amount D, Amount E, and Amount F and do not address the monthly distributions Taxpayer A and Taxpayer B receive from IRA X and IRA Y, respectively.

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.

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

Sincerely yours,

(SIGNED) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice 437