



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

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T:EP:RA:T2

Legend:

- Taxpayer A: \*\*\*\*\*
- Taxpayer B: \*\*\*\*\*
- IRA X: \*\*\*\*\*
- Company M: \*\*\*\*\*
- Amount D: \*\*\*\*\*
- Individual C: \*\*\*\*\*
- Individual G: \*\*\*\*\*
- State P: \*\*\*\*\*
- Company F: \*\*\*\*\*
- Company H: \*\*\*\*\*
- IRA Y: \*\*\*\*\*
- Company R: \*\*\*\*\*

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

This is in response to your letter dated June 10, 2004, as supplemented by correspondence dated July 20, 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 requested.

Taxpayer A's husband, Taxpayer B, died on January 18, . At the time of his death, Taxpayer B maintained IRA X with Company M. It has been represented that Taxpayer A is the primary beneficiary of IRA X. Taxpayer A asserts that after Taxpayer B's death, she was advised by Individual C, a professional financial advisor with Company F, to withdraw the funds from IRA X and to reinvest those assets in new life insurance contracts. Taxpayer A withdrew Amount D from IRA X in April and purchased four new life insurance policies with Company F and Company H. Taxpayer A states that she relied on Individual C to invest Amount D into tax deferred accounts, and that she believed that such amount had been invested in tax deferred accounts. Taxpayer A states that she did not become aware that Amount D had not been placed in tax deferred accounts until she received a Form 1099-R in February .

After discovering that Amount D had not been invested in tax deferred accounts, Taxpayer A, in the spring of , contacted Individual G, an employee with the State P Department of Insurance to help her correct the distribution error. In a letter dated May 7, from Company H to Taxpayer A, Company H cancelled the insurance policy and refunded the premiums, plus interest, to Taxpayer A. In a letter dated May 20, from Company F to Taxpayer A, Company F cancelled the insurance policies and refunded the premiums, plus interest to Taxpayer A. According to account statements submitted with this ruling request, Taxpayer A, to show her intent to keep Amount D in a tax deferred account, deposited Amount D into IRA Y, a rollover IRA, she established with Company R on May 26, .

Based on the following facts and representations, 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 defined 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 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 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 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 rollover requirement under section 408(d)(3)(A) and section 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.

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, or 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 in this case indicates that in \_\_\_\_\_, Taxpayer A, as the owner IRA X, withdrew Amount D from IRA X, and, on the advice of Individual C, invested Amount D in life insurance policies with Company F and Company H. Taxpayer A assumed that Amount D had been invested in tax deferred accounts and did not discover that such amount had not been invested in tax deferred accounts until she received a Form 1099-R. As soon as Taxpayer A discovered this mistake, she contacted Individual G to correct the distribution.

Documentation submitted with Taxpayer A's request for a ruling indicates that in May , Company F and Company H cancelled the insurance policies and refunded the premiums, plus interest to Taxpayer A. Documentation submitted also indicates that Taxpayer A established IRA Y, a rollover IRA with Company R, on May 26, , where she deposited Amount D. Amount D remains invested in IRA Y.

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. Documentation submitted with this ruling request indicates that on May 26, , Taxpayer A deposited Amount D into IRA Y at Company R. Provided all of the other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to Amount D, this amount will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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 assumes that IRA X met the requirements of the section 408 of the Code at all time relevant to this ruling. This ruling also assumes that IRA Y meets the requirements of Code section 408.

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.

A copy of this ruling is being sent to your authorized representative pursuant to a power of attorney (Form 2848) on file in this office.

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: