



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200450055

SEP 13 2004

U.I.L. 408.03-00

Legend:

Taxpayer A = *****

IRA X = *****

Amount D = *****

Company M = *****

Individual P = *****

Trust F = *****

Dear *****:

This is in response to your letter dated July 21, 2004, as supplemented by correspondence dated August 26, 2004 and September 8, 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.

Taxpayer A, who is years old, maintained an individual retirement arrangement, IRA X, with Company M. On , Taxpayer A signed a revocable living trust document prepared by her attorney, Individual P, and established Trust F. Individual P also prepared generic blank letters of instructions for Taxpayer A to fill out for her various accounts in order to transfer the funds in these accounts to Trust F. Taxpayer A asserts that in accordance with Individual P’s instructions and not being advised otherwise, she sent a letter to Company M instructing it to transfer the balance in IRA X, Amount D, to Trust

F. Documentation submitted with this request for a ruling indicates that on _____, assets in IRA X (cash, equities and dividends) were transferred from IRA X to Trust F. Taxpayer A asserts that she did not intend to close IRA X and that Individual P failed to inform her that she should not send Company M an authorization letter instructing it to transfer Amount D to Trust F. Taxpayer A asserts that Amount D, less amounts required to be distributed under Code section 401(a)(9) and amounts used to pay federal income taxes on Amount D, remains in Trust F. Taxpayer A asserts that, with the exception of a distribution to meet Code section 401(a)(9) and the payment of federal income taxes on the IRA X distribution, she has not otherwise used the IRA distribution since it has been in Trust F. Taxpayer A submitted account statements for Trust T for the period beginning _____ through _____ to support her assertion that, except for the above distributions, the IRA X distribution has remained untouched in Trust F.

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, less amounts required to be distributed under Code section 401(a)(9), 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 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 a distribution in the amount of Amount D was made to Taxpayer A from IRA X in , as supported by the Form 1099-R issued by Company M to Taxpayer A and submitted with her request for a ruling. Further, documentation submitted with this request for a ruling indicates that on , the IRA X assets (cash, equities and dividends) were transferred from IRA X to Trust F. Taxpayer A asserts that she is a senior citizen and, not being advised otherwise by Individual P, mistakenly sent a letter to Company M instructing it to transfer the assets in IRA X to Trust F using the blank generic authorization letters prepared by and given to her by Individual P. Taxpayer A asserts that she never intended to close IRA X and that, with the exception of distributions to satisfy her 401(a)(9) requirements and to pay Federal income taxes on the distribution from IRA X, she has not otherwise used any of the IRA X assets since they have been in Trust F.

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, less amounts necessary to satisfy Code section 401(a)(9), from IRA X. Taxpayer is granted a period of 60 days from the date of this ruling to contribute Amount D, less amounts required to be distributed under Code section 401(a)(9),

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, less the amounts required to be distributed under Code section 401(a)(9), will be considered rollover contribution within the meaning of section 408(d)(3) of the Code.

Taxpayer A 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 amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This ruling assumes that IRA X satisfied 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.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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