

200507015



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

U.I.L. 408.03-00

NOV 23 2004

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Legend:

Taxpayer A	= *****
Taxpayer B	= *****
IRA X	= *****
Company F	= *****
Amount D	= *****
Account H	= *****
Bank B	= *****
Amount E	= *****
Account J	= *****
Bank C	= *****

Dear \*\*\*\*\*.

This is in response to your letter dated September 1, 2004, as supplemented by correspondence dated October 17, 2004, October 25, 2004, November 10, 2004, and November 19, 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").

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The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A who is [REDACTED] years old maintained an individual retirement arrangement, IRA X, with Company F. Documentation submitted by Taxpayer A indicates that on [REDACTED] he withdrew Amount D from IRA X and on [REDACTED] deposited Amount D into Account H, a joint checking account maintained by Taxpayer A and Taxpayer B, Taxpayer A's spouse, with Bank B. Documentation submitted by Taxpayer A further indicates that on [REDACTED] Taxpayer A withdrew Amount E from Account H and deposited in into Account J, a savings account maintained by Taxpayer A and Taxpayer B at Bank C.

Taxpayer A asserts that at the time he withdrew Amount D from IRA X he was confused as to the nature of this account and unaware that he was withdrawing money from his IRA. Taxpayer A asserts that he assumed that Amount D was being withdrawn from a regular account. Taxpayer A submitted account statements for IRA X that indicates that on [REDACTED] when he withdrew Amount D from IRA X, the name on the account read "Company F ST CO FBO Taxpayer A". Taxpayer A submitted documentation that shows that the name of the account was changed in [REDACTED] to read "Company F Taxpayer A IRA". Taxpayer A states that he became aware of the distribution when he received a Form 1099-R from Company F indicating that a distribution of Amount D had been made from IRA X during tax year [REDACTED]. Taxpayer A asserts that Amount E remains in Account J and that he has not used Amount E since it has been in Account J. Taxpayer A submitted account statements for Account J through [REDACTED] that shows that it has a balance in excess of Amount E.

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 E 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 from IRA X in the amount of Amount D on June 11, 2002, and deposited Amount D into Account H on June 15, 2002. Documentation submitted further indicates that Taxpayer A withdrew Amount E from Account H on July 8, 2002 and deposited Amount E in Account J, a savings account he maintains at Bank C. Taxpayer A asserts that he was confused at the time of the withdrawal on June 11, 2002 and thought he was making a withdrawal from a regular account at Company F and not IRA X as the check he received from

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Company F in the amount of Amount D did not indicate that the distribution was from IRA X but read "Company F ST CO FBO Taxpayer A". Further, Taxpayer A submitted account documentation that shows that Company F, subsequent to the June 2002 distribution, renamed IRA X in [REDACTED] to read "Company F Taxpayer A IRA". Taxpayer A asserts that he has not used Amount E since it has been in Account J and submitted an account statement as of November 19, 2004 that shows that Account J has a balance in excess of Amount E.

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 E from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount E 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 E will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Taxpayer A is over 70 ½ and therefore has attained his required beginning date for purposes of Code section 401(a)(9). In this regard, this ruling does not authorize the rollover of any portion of Amount E that is required to be distributed to Taxpayer A since Amount E has been in Account J.

This ruling assumes that IRA X satisfies 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

\*\*\*\*\* [REDACTED]

Sincerely yours,

**Joyce E. Floyd**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2