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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

SE.T:EP:RA:T2

Legend:

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

Dear *****:

This is in response to your letter dated August 22, 2004, as supplemented by correspondence dated November 14, 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").

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

Taxpayer A, who is 77 years old, maintained an individual retirement arrangement, IRA X, with Bank B. Since Taxpayer A has attained her required beginning date, she has been receiving annual distributions from IRA X as required under Code section 401(a)(9). Information submitted with this request indicates that Taxpayer A's annual required minimum distribution for tax year 2003 is Amount D. Documentation submitted by Taxpayer A indicates that on June 30, 2003, she completed a Bank B IRA withdrawal statement requesting

that Bank B make a distribution to her for the following reason: "normal distribution for tax year". Even though Taxpayer A requested a normal distribution for the tax year, Bank B, on July 14, 2003, made a lump sum distribution of the entire proceeds of IRA X to Taxpayer A. Documentation submitted by Taxpayer A indicates that on July 14, 2003 Amount F (Amount E less Amount D) was deposited into Account H, a money market account she also maintains with Bank B. Subsequent to the July 14, 2003 distribution of Amount F from IRA X, Bank B stamped IRA X as "closed".

Taxpayer A asserts that she at the time she made the withdrawal of Amount F, she assumed that she was rolling Amount F over to another IRA time-deposit investment sponsored by Bank B that was similar to the one in which Amount F was previously invested. Taxpayer A further asserts that Bank B misunderstood her instructions as indicated on the IRA withdrawal statement and that she did not intend to take a total distribution from IRA X. Taxpayer A further states that she believed that Amount F had been rolled over to another IRA at Bank B on July 124, 2003 and was unaware that Amount F had not been rolled over to another IRA at Bank B until she received a Form 1099-R from Bank B indicating a distribution from IRA X in the amount of Amount E. Taxpayer A asserts that she has not used any of Amount F since it has been in Account H and has submitted account statements for Account H since Amount F was deposited into that account that indicates that Amount F continues to be held in that account.

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 F 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 on June 30, 2003, Taxpayer A completed a Bank B IRA withdrawal statement requesting that Bank B make a distribution to her as a "normal distribution for the tax year". Documentation submitted also indicates that Bank B made a distribution of the entire proceeds of IRA X to Taxpayer A on July 14, 2003 even though Taxpayer A specifically requested her normal distribution for the tax year. Taxpayer A asserts that even though a total distribution was made from IRA X on July 14, 2003, she assumed that Amount F was being rolled over to another time-deposit IRA account because the investment in which Amount F was held had matured. Further, Taxpayer A states that she did not intend take a total distribution from IRA X as evidenced by the fact that she deposited the entire proceeds of IRA X, less her required minimum distribution amount, into another account with Bank B on the same day as she received the distribution from IRA X. Taxpayer A asserts that

she believed that Amount F had been rolled over to another IRA with Bank B on July 14, 2003 and was unaware that Amount F had not been rolled over to another IRA with Bank B until she received a Form 1099-R from Bank B indicating that a total distribution had been made from IRA X during tax year 2003. Taxpayer A asserts that Amount F remains in Account H, as supported by account statements, and that she has not used Amount F since it has been 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 F from IRA X. Taxpayer is granted a period of 60 days from the date of this ruling to contribute Amount F, less the amount required to be distributed to her pursuant to Code section 401(a)(9) for tax year 2004, 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 F, less the Code section 401(a)(9) required minimum distribution amount for 2004, will be considered rollover contribution within the meaning of section 408(d)(3) of the Code.

Taxpayer A is over 70 ½ and therefore 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 any portion of Amount F that may be required to be distributed to Taxpayer A by Code section 401(a)(9).

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 [REDACTED], [REDACTED], at [REDACTED].

Sincerely yours,

[REDACTED] Manager
Employee Plans Technical Group 2