



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200518085

U.I.L. 408.03-00

FEB 10 2005

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Legend:

Taxpayer A = \*\*\*\*\*  
Taxpayer B = \*\*\*\*\*  
IRA X = \*\*\*\*\*  
Company C = \*\*\*\*\*  
Amount D = \*\*\*\*\*  
Amount E = \*\*\*\*\*  
Amount F = \*\*\*\*\*  
Bank B = \*\*\*\*\*

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

This is in response to your letter dated October 6, 2004, as supplemented by correspondence dated November 8, 2004, November 19, 2004, and December 7, 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 maintained an individual retirement arrangement, IRA X, with Company C. Taxpayer A states that in [REDACTED] he and his spouse,

Taxpayer B, discussed with Bank B personnel the possibility of taking a partial distribution from IRA X. Taxpayer A and Taxpayer B purchased a home in [REDACTED] and represent that the major need for the money was for the purchase of the new home and to prepare a part of the house for office space for Taxpayer B.

The Company C distribution form submitted by Taxpayer A with this request for a ruling shows that on [REDACTED] Taxpayer A requested, in Section 4, Request for Distribution, a partial distribution from IRA X. The distribution form completed by Taxpayer A does not indicate the specific dollar amount Taxpayer A desired to have distributed from IRA X. Taxpayer A, who would have attained age [REDACTED] in [REDACTED] states that he did not include a specific dollar amount on the distribution form because he was told by Bank B personnel that he would not face a penalty on the amount of the distribution. Section 4 of the Company C distribution form indicates that the amount distributed is the "penalty free amt".

Taxpayer A received a distribution from IRA X in [REDACTED] in the amount of Amount D as supported by the Form 1099-R issued to him by Company C. A year-end account statement for IRA X issued by Company C indicates that Amount D is less than the total value of IRA X.

Taxpayer A represents that when he received Amount D from Company C, he contacted Bank B about the distribution and was informed that the distribution would not face a penalty, and based on this information, he decided not to make a partial rollover at that time.

Taxpayer A represents that the total cost for the repairs to his home did not require the use of all of Amount D, only Amount E. Taxpayer A and Taxpayer B included Amount D in their gross income for tax year [REDACTED] and paid an additional tax equal to [REDACTED] percent of Amount D. Taxpayer A represents that the excess amount (the amount of the distribution that was not used) is in his checking account. Taxpayer A says that he missed the 60-day rollover period because Bank B personnel informed him that there would be no penalty on the distribution since he would attain age [REDACTED] the year of the distribution, and that he is not knowledgeable about IRA distributions and the rollover requirements. Taxpayer A represents that now that he has learned that Amount D is subject to the 10 percent additional tax because he had not attained age 59 ½ at the time Amount D was distributed to him, he would like to make a partial rollover of Amount F, the portion of Amount D that exceeded the cost of the repairs to his home, back to an IRA.

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 (the difference between Amount D and 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 any 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.

From the documents submitted, it appears that Taxpayer A received a partial distribution from IRA X in the amount of Amount D in [REDACTED] Taxpayer A represents that the major need for the IRA distribution was for the purchase of his new home and to prepare office space in the home for Taxpayer B. Taxpayer A states that when he received the distribution of Amount D from IRA X he was told by Bank B personnel that he would not have to pay a penalty on the distribution.

Taxpayer A states that his decision to not roll over Amount F, the portion of Amount D that was not used to make the repairs to his home, was based, in part, on information provided by Bank B personnel as to the applicability of the 10 percent additional tax imposed on a distribution from an IRA prior to the IRA owner attaining age 59½. Taxpayer A states that Amount F remains in his checking account. The documentation shows that although there may have been a misunderstanding as to the applicability of the 10 percent additional tax on Amount D, the ability to redeposit Amount F into an IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer.

Therefore, with respect to your ruling request, we conclude that, pursuant to Code section 408(d)(3)(I), the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount F (the difference between Amount D and Amount E, i.e., the amount of the IRA X distribution that was not used to make the repairs to his home) from IRA X and that Amount F will not be considered a valid rollover contribution under Code section 408(d)(3) because the 60-day requirement was not satisfied.

This ruling assumes that IRA X meets the 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 (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:

Deleted copy of letter ruling  
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