

200523030



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAR 18 2005

U.I.L. 408.03-00

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

*T:EP:RA:T2*

Legend:

Taxpayer A	= *****
IRA X	= *****
IRA Y	= *****
IRA Z	= *****
Company N	= *****
Company O	= *****
Amount D	= *****
Amount E	= *****
Amount F	= *****
Amount G	= *****
Individual J	= *****
Account H	= *****
IRA W	= *****
Company P	= *****
IRA K	= *****

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

This is in response to your letter dated November 2, 2004, as supplemented by correspondence dated December 14, 2004, February 11, 2005, February 17, 2005, and February 24, 2005, 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 two individual retirement arrangements, IRA X and IRA Y, with Company N, and IRA Z with Company O. Taxpayer A asserts that in September 2003, she terminated IRA X, IRA Y and IRA Z and received Amount D, Amount E, and Amount F, respectively, from those IRAs. Taxpayer A states that she terminated IRA X, IRA Y and IRA Z so that she could roll the funds in those IRAs over to another IRA, IRA W, she maintained with Company P.

Taxpayer A states that on September 16, 2003 she met with Individual J, a Company P employee, and discussed depositing the proceeds of IRA X, IRA Y and IRA Z into IRA W, an IRA she already maintained with Company P. Taxpayer A asserts that she informed Individual J that the proceeds were from IRAs and that she understood from her meeting with Individual J that he would deposit the proceeds into IRA W. Taxpayer A further asserts that she was not aware that Amount G, the total amount distributed from IRA X, IRA Y and IRA Z, had not been rolled over to IRA W until her tax return preparer informed her that the IRA proceeds had not been rolled over. Taxpayer A states that upon further review, she discovered that Amount G had not been rolled over to IRA W as she intended, but instead had been deposited into Account H, a money market account Taxpayer A also maintains with Company P. Documentation submitted by Taxpayer A shows that three checks totaling Amount G were deposited into Account H on September 16, 2003.

Taxpayer A states that in August 2004, she contacted Individual J regarding the error. In a letter to Taxpayer A dated December 7, 2004, Company P acknowledged that due to a miscommunication the IRA proceeds were deposited into a regular account instead of a qualified IRA and stated that it had corrected the error by transferring Amount G from Account H to a qualified IRA. Documentation submitted by Taxpayer A shows that she established a new IRA, IRA K, with Company P on September 20, 2004. Taxpayer A states that she established IRA K as an easier way to facilitate the correction of the rollover. Taxpayer A submitted an account statement for Account H for the period ending November 30, 2004, that shows that Amount G was transferred from Account H to IRA K on November 3, 2004. Company P issued a corrected Form 1099-R to

Taxpayer A for tax year [REDACTED] on which it reported Amount G as a rollover contribution.

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, Amount E and Amount F from IRA X, IRA Y, and IRA Z, respectively.

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 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 requirement under sections 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, IRA Y and IRA Z in September 2003. Taxpayer A asserts that when she met with Individual J she informed him that the proceeds were from IRAs and that she desired to have these proceeds rolled over into IRA W, an IRA she already maintained with Company P. Documentation submitted by Taxpayer A shows that the IRA proceeds were not rolled over into IRA W as Taxpayer A directed, but had been deposited into a brokerage account Taxpayer A also maintained with Company P. The IRA proceeds totaling Amount G were deposited into Account H well within the 60-day rollover period. Company P has acknowledged the error and on November 3, 2004, Amount G was transferred from Account H to IRA K.

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, Amount E and Amount F from IRA X, IRA Y and IRA Z, respectively. Documentation submitted by Taxpayer A shows that on November 3, 2004, Amount G (the sum of Amount D, Amount E, and Amount F) was transferred from Account H to IRA K. 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 G will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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, IRA Y, IRA Z, IRA W and IRA K satisfy 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.

\*\*\*\*\*

200 523030

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:

Deleted copy of letter ruling  
Notice 437