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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 20 2006

U.I.L. 408.03-00

T.E.P.:R4:T2

Legend:

Taxpayer A	=
Taxpayer B	=
IRA X	=
Amount D	=
Amount E	=
Amount F	=
Amount G	=
Bank B	=
Account E	=
Taxpayer C	=
Individual M	=

Dear :

This is in response to your letter dated August 17, 2005, as supplemented by correspondence dated June 29, 2006, July 13, 2006, August 3, 2006, August 10, 2006, August 24, 2006, and September 11, 2006, 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's husband, Taxpayer B, died on _____ Taxpayer B. maintained an individual retirement arrangement, IRA X, with Bank B. Taxpayer A asserts that she was the designated beneficiary of Taxpayer B's IRA. Taxpayer A and Taxpayer B also maintained a joint checking account, Account E, with Bank B.

Taxpayer A states that on September 24, 2004, she went to Bank B to transfer accounts into her name. Taxpayer A asserts that Bank B personnel advised her that there would not be any penalties or negative income tax consequences in transferring all funds, including IRA X, into Account E. Documentation submitted by Taxpayer A shows that she completed an IRA beneficiary distribution form on September 24, 2004 on which she elected to receive a distribution of the total balance from IRA X, and on which she elected to have Federal income tax withheld on the distribution. Documentation submitted by Taxpayer A further shows that, per her request, distributions in the amounts of Amount D and Amount E were made to Taxpayer A on September 27, 2004. Documentation submitted by Taxpayer A also shows that the total balance of IRA X Amount G (Amount D, Amount E, and Taxpayer B's 2004 required minimum distribution) was deposited into Account E on September 27, 2004. In addition, Account E was changed beginning with the November 2004 statement from Taxpayer A and Taxpayer B's names to Taxpayer A and Taxpayer C's names.

Taxpayer A states that in early 2005, she received a Form 1099-R from Bank B indicating that the total amount distributed from IRA X, Amount G, was taxable. Taxpayer A represents that her intent was to transfer IRA X into her name without incurring penalties or negative tax consequences and relied on Bank B personnel to accomplish this. Taxpayer A further states that she was incorrectly advised by Bank B as to how to accomplish her intent. Taxpayer A states upon learning of the taxable nature of the transaction, she asked Bank B to correct the problem but Bank B informed her that nothing could be done because the 60-day rollover period had expired. However, in a letter Individual M of Bank B stated that there must have been a miscommunication between Taxpayer A and the Bank B representative; that it seems as though the representative did not give information clearly in regards to the tax payment needed for a spousal beneficiary IRA payout and the Taxpayer A was unaware of any tax consequences. Taxpayer A states that the incorrect advice given by Bank B, upon which she relied, resulted in the distribution from IRA X not being rolled over to another IRA within the applicable 60-day time period.

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)(3)(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 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 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 Amount G from IRA X on September 27, 2004 and that such amount was deposited into Account E, a joint checking account with Taxpayer C. Taxpayer A states that she failed to complete a rollover of Amount F to another IRA within the applicable 60-day time period because Bank B personnel gave her incorrect advice as to the tax consequences of such distribution even though the beneficiary distribution form clearly indicates the distribution was taxable. Taxpayer A has not presented any evidence to the Service to show that she attempted to roll over such amount to an IRA in her name. In fact, Amount G was deposited into a joint checking account with Taxpayer C, and commingled with other funds being used by Taxpayer A for living expenses. Further, Taxpayer A has not presented any evidence that she informed Bank B personnel that she wanted to roll over Amount F into an IRA and only learned of the adverse tax consequences after the 60 day rollover period had expired. In this case, there was no intent to rollover nor was there erroneous advice given regarding the rollover transaction itself. Taxpayer A learned of the adverse tax consequences after the 60-day rollover period had expired and now wishes to reverse the transaction because of the increased tax liability created by the withdrawal.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement for the distribution of Amount F from IRA X.

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 letter is being sent to your authorized representative in accordance with Forms 2848 on file in this office.

If you have any questions regarding this letter, please contact***SE:T:EP:RA:T:2.

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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