



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201426034

APR 03 2014

Uniform Issue List: 408.06-00

Attention:

Legend:

Company M	=
Trustee N	=
Trust T	=
Custodian C	=
State A	=
City B	=
Country E	=
Stock Exchange X	=
Company F	=
Custodian G	=
Date 1	=

**201426034**

Dear \_\_\_\_\_ :

This is in response to your request dated March 25, 2013, in which you request a modification of a ruling previously issued by the Internal Revenue Service (the "Service") with respect to the applicability of section 408(m) of the Internal Revenue Code (the "Code") to investments in Trust T made by individual retirement accounts described in section 408(a) of the Code and by individually directed accounts maintained under plans qualified under section 401(a) of the Code.

The following facts and representations have been submitted by your authorized representative under penalty of perjury in support of the ruling requested.

Company M formed Trust T as an investment trust under State A law. The trustee of Trust T is Trustee N, a banking corporation organized under the laws of State A with trust powers. Trust T is created as a "grantor trust" under section 301.7701-4(c) of the Income Tax Regulations (the "Regulations"). Trust T holds deposits of gold bullion and issues in exchange for those deposits units designated as Trust T shares (the "shares"), representing undivided fractional beneficial ownership interests in Trust T. Shares of Trust T were sold as an offering of securities to the public pursuant to an effective registration statement under the Securities and Exchange Act of 1933 and shares are listed for trading on Stock Exchange X.

Trustee N entered into a custodial agreement with Custodian C, a national banking association organized under the laws of the United States to serve as the custodian of Trust T's bullion, physically storing the bullion within its own vault in City B in Country E.

Company M obtained a ruling on Date 1 in which the Service concluded that the purchase of shares by the trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code will not be treated as resulting in a taxable distribution from such account under section 408(m)(1) of the Code.

Company M has been informed by Company F, the parent company of Custodian C, that it is reorganizing its operations and will transfer its custodial business to Custodian G, a wholly-owned public limited company in Country E. You represent that while the corporate entity serving as the custodian for Trust T's gold bullion is changing, the custodial operations will remain the same and the custodial business will continue to operate out of the same facility. The statement of facts from the original submission is only changed as to the name of the custodian and the country of incorporation of the custodian.

You have requested a ruling that the purchase of shares by the trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code will not be treated as resulting in a taxable distribution from such account under section 408(m)(1) of the Code notwithstanding the change in the country of incorporation of the custodian.

Section 408(m)(1) of the Code provides that the acquisition of any collectible by an individual retirement account or by an individually-directed account under a plan described in Code section 401(a) shall be treated as a distribution from such account in an amount equal to the cost to such account of such collectible.

Section 408(m)(2) of the Code provides that for purposes of section 408(m), the term "collectible" means (A) any work of art, (B) any rug or antique, (C) any metal or gem, (D) any stamp or coin, (E) any alcoholic beverage, or (F) any other tangible personal property specified by the Secretary for purposes of Code section 408(m).

Section 408(m)(3) of the Code provides that for purposes of section 408(m), the term "collectible" shall not include (A) any coin which is (i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code, (ii) a silver coin described in section 5112(e) of title 31, United States Code, (iii) a platinum coin described in section 5112(k) of title 31, United States Code, or (iv) a coin issued under the laws of any State, or (B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7) requires for metals which may be delivered in satisfaction of a regulated futures contract, if such bullion is in the physical possession of a trustee described in section 408(a).

In the prior ruling, we concluded that the purchase of shares by a trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code will not be treated as the acquisition of a collectible for purposes of section 408(m) of the Code, and thus the acquisition of such shares does not result in a taxable distribution for such account under 408(m)(1) of the Code. We noted, however, that in the event of a redemption of shares that results in the distribution of gold bullion to the trustee or custodian of an individual retirement account or individual-directed account, such distribution would constitute the acquisition of a collectible for purposes of Code section 408(m) of the Code except to the extent section 408(m)(3) of the Code is satisfied. Section 408(m)(3) requires physical possession by a trustee described in 408(a) of bullion actually held by an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code.

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In the present case, as in our prior ruling, the bullion in question is not held directly by individual retirement accounts or by individually-directed accounts under a plan qualified under section 401(a) of the Code. Rather, such accounts hold shares in Trust T. Unless the bullion is held directly by the individual retirement accounts or individually-directed accounts under a plan qualified under section 401(a) of the Code, the country of incorporation of the custodian does not have an impact on the status of the individual retirement accounts. Thus, the change in the country of incorporation of the Custodian G does not constitute a material change of controlling facts that would change the conclusions in the original ruling.

Based on the above analysis, we conclude that the purchase of shares by the trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code will not be treated as resulting in a taxable distribution from such account under 408(m)(1) of the Code.

However, as noted in our prior ruling, if a trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code distributes the shares of the bullion to the owner of an individual retirement account or the owner of an individually-directed account maintained under a plan qualified under section 401(a), the value of the shares or gold bullion will be treated as a distribution taxable to the distributee to the extent provided under the applicable provisions of Code section 408 and 402.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The user fee you paid in connection with this ruling request was in excess of the amount required by section 6 of Revenue Procedure 2014-8. Accordingly, the excess user fee will be refunded to you under separate cover.

If you wish to inquire about this ruling, please contact (ID ) at ( ) . Please address all correspondence to SE:T:EP:RA:T3 .

Pursuant to the Power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely yours,



Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: