



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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JUN 01 2015

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U.I.L. 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXX

Individual B = XXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXX

Company M = XXXXXXXXXXXXXXXX

Company N = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your request dated October 7, 2014, as supplemented by correspondence dated April 11, 2015, 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 penalty of perjury in support of the ruling requested.

On December 30, 2013, Taxpayer A withdrew Amount D from IRA X. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Individual B, of Company M.

Taxpayer A represents that in order to safeguard her financial security, in the event of economic recession, she met with Individual B, her financial advisor at Company M about changing her IRA X investments to invest in Gold American Eagle and Silver American Eagle coins. Individual B told Taxpayer A that she could not make such an investment through Company M and advised her to do some research before withdrawing funds from IRA X to purchase physical gold investments. Taxpayer A represents that Individual B did not explain any tax consequences of the transaction.

Upon additional research, Taxpayer A decided she would still like to invest in physical gold and contacted a representative of Company N who explained that Company N could facilitate her request, but because the source of the funds to purchase gold would be from her IRA that she should speak with her financial advisor. Accordingly, on December 23, 2013, Taxpayer A contacted Individual B via phone to request information on withdrawing funds from IRA X to invest in physical gold. On December 30, 2013, a check was made payable directly to Company N. Company N used Amount D to purchase Gold American Eagle and Silver American Coins. Taxpayer A has physical possession of the coins.

Taxpayer A further represents that she was not aware of the income tax liability associated with this transaction until she contacted her tax preparer on April 9, 2014, to file her Federal 2013 tax return and by that time the 60-day rollover period had already expired.

Based on the foregoing facts and representations, you request that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount D.

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 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred 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, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the 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 presented and documentation submitted by Taxpayer A do not support the assertion that Taxpayer A's failure to accomplish a timely rollover was caused due to an error committed by Individual B of Company M. In addition, a representative of Company N, which is a precious metal company and not an IRA sponsor, advised Taxpayer A to speak with her financial advisor. Accordingly, Taxpayer A was put on notice that an IRA could not be established

through Company N by the purchase of Gold American Eagle and Silver American Eagle coins.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

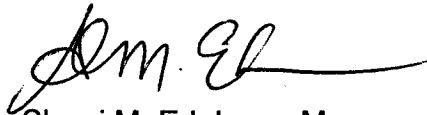
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

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.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxx, at xxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T:2.

Sincerely yours,



Sherri M. Edelman, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc:

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