



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200443036

U.I.L.: 408.03-00

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JUL 28 2004

SE: T: EP: RA: WK

Legend:

Taxpayer A = \*\*\*\*\*

Taxpayer B = \*\*\*\*\*

IRA X = \*\*\*\*\*  
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Bank F = \*\*\*\*\*

Amount D = \*\*\*\*\*

Individual M = \*\*\*\*\*

Company T = \*\*\*\*\*

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

This is in response to your letter dated February 16, 2003, as supplemented by correspondence dated July 8, 2004 and July 26, 2004, in which you request a ruling to waive 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 the ruling requested.

Taxpayer A maintained an individual retirement arrangement (IRA X) with Bank F. In February, Taxpayer A and Taxpayer B, her husband, were approached by a salesman who offered a self-directed program at Company T in which IRA assets could be used as a down payment on real estate purchases. Based on this information, Taxpayer A, on February withdrew Amount

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D from IRA X with the intent to put Amount D into this new self-directed IRA program at Company T within 60 days. Taxpayer A and Taxpayer B assert that before they deposited the check in the amount of Amount D at Company T, they discussed the program with Individual M who informed them that the investment program did not sound correct. Taxpayer A and Taxpayer B assert that they also spoke with a supervisor at Company T who informed them that Taxpayer A could not get a mortgage loan under this program and that the IRA X assets would be held in a general fund controlled by Company T.

Taxpayer A received a Form 1099-R from Bank F and realized that the distribution check had not been returned to Bank F. Taxpayer A asserts that she has not cashed the check in the amount of Amount D and has submitted a copy of the front and back of the check. Taxpayer A asserts that the check in the amount of Amount D remains in her possession.

Based on the facts and representations submitted, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D 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 60<sup>th</sup> day after the day on which the individual receives 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 includible 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 or good conscience, including casualty, disaster, or other events beyond the reasonable control of 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, 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.

In this case, Taxpayer A received a distribution in the amount of Amount D from IRA X as supported by the Form 1099-R issued by Bank F. Taxpayer A asserts that it was her intention at the time she withdrew Amount D from IRA X to roll over Amount D to an IRA at Company T within 60 days. Taxpayer A further asserts that when she attempted to deposit Amount D at Company T the investment program in which she was interested was not available for IRA funds. Taxpayer A asserts that she did not realize that the check in the amount of Amount D had not been returned to Bank F until she received the Form 1099-R from Bank F. Taxpayer A submitted a copy of the front and back of the uncashed check in the amount of Amount D with her request for a ruling. Taxpayer A asserts that to date the check remains in her possession and that she has not cashed it or otherwise used it.

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 from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling letter to rollover Amount D to an IRA. Provided all other requirements of

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Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, this amount will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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.

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.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney (Form 2848) on file in this office.

If you have any questions regarding this letter, please contact \*\*\*  
SE:T:EP:RA:T2.

Sincerely yours,

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose