TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 1 0 2004

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Uniform Issue List: 408.03-00

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Legend:

Taxpayer	=	****************************
		************************
Amount A	=	***
Amount A-1	=	*******************
Amount A-2	=	***
		***
		***
		**
		***
Account B	=	**********************************
		**
Bank M	=	**************************************
		**
IRA X	=	**
		***
		**
		**************************

Dear ***********************:

This is in response to your letter dated April 21, 2004, as supplemented by additional correspondence and communications dated June 17, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted by you under penalty of perjury in support of the ruling requested:

The Taxpayer was the owner of IRA X, an individual retirement arrangement ("IRA") administered by Bank M.   IRA X was a "Roth IRA" established and maintained pursuant to Code section 408A. In   the certificates of deposit ("CDs") that were used to fund IRA X were due to expire. Bank M notified the Taxpayer that, effective   the CDs would be renewed for another term of 18 months, absent any action by the Taxpayer. However, the Taxpayer was not satisfied with the rate of return paid by Bank M on the CDs, and she decided to reinvest the bulk of the IRA X assets in United States Government Series I Savings Bonds ("I Bonds"). The Taxpayer gave timely notice to Bank M of her intent to change the IRA X investments. On   the Taxpayer applied for the I Bonds, indicating on the application forms that the bonds were intended to be used as rollover contributions to fund IRA X. Bank M withdrew Amount A-2 from IRA X and used the assets to purchase the Taxpayer's I Bonds. Bank M did not, however, re-deposit the I Bonds as a rollover contribution to IRA X or another IRA, as the Taxpayer had instructed. Instead, Bank M registered and distributed the I Bonds to the Taxpayer.

Unbeknownst to the Taxpayer at the time, Bank M had treated the I Bond purchases as part of the distribution of Amount A from IRA X. At the same time, Amount A-1, an amount of money too small to be applied to the I Bond purchase, was distributed from IRA X and deposited in Account B, a personal savings account established at Bank M in the name of the Taxpayer's "Roth IRA." At no time during   did Bank M inform the Taxpayer that it had treated the purchase of the I Bonds or the establishment of Account B as parts of a taxable distribution of all of the Taxpayer's IRA X assets.

In   (when the Taxpayer and her Spouse met with a tax professional to begin preparing their   'ax returns), the Taxpayer learned that neither she nor Bank M had completed a rollover or reinvestment of any part of her IRA X assets. Upon inquiring at Bank M, the Taxpayer was informed that the bank was not equipped to act as a custodian for individual retirement arrangements investing in United States Savings Bonds. Thus, when the Taxpayer purchased the I Bonds, Bank M considered IRA X to be closed.

The Taxpayer represents that Bank M subsequently cashed out her I Bonds and now holds the proceeds of that cash-out in the bank's "Fed Account." However, Bank M refuses to re-establish the Taxpayer's IRA because more than 60 days have elapsed since the assets were first "distributed," in

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount A 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) 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 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 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 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) 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).

Revenue Procedure 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

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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, the Taxpayer who owned IRA X instructed the custodian of that IRA, Bank M, not to renew the bank's CD as her IRA investment of choice. Instead, the Taxpayer elected to have Bank M purchase I Bonds, with the intent of replacing the Bank M CDs with those I Bonds as her IRA X investments. Bank M, however, treated the I bond purchases as part of a lump sum withdrawal of all assets from IRA X, and a taxable distribution to the Taxpayer. Bank M did not inform the Taxpayer of its inability or unwillingness to continue acting as a custodian for IRA X, given the Taxpayer's decision to invest the IRA assets in I Bonds.

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 A from IRA X. The Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute all or a portion of Amount A into a Roth IRA. Provided all other requirements of Code section 408(d)(3) except the 60-day requirement are met with respect to all or a portion of Amount A, that amount will be considered a rollover contribution within the meaning of section 408(d)(3).

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.

If you wish to inquire about this ruling, please contact ****************************** the Service by telephone at   or by fax at   Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,
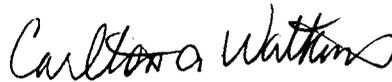
Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
- Deleted copy of ruling letter
- Notice of Intention to Disclose