200452042

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 30 2004

T:EP:RA:T2

U.I.L. 408.03-00

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Legend:

Taxpayer A = ***********************
Taxpayer B = ***********************
IRA X = ***********************
Company O = ***********************
IRA Y = ************************
Bank B = ************************
Bank W = ************************
Amount D = ************************
Amount E = *************************
Individual M = ************************
Company P = *************************
Company L = *************************

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

This is in response to your letter dated June 4, 2004, as supplemented by correspondence dated July 13, 2004, as supplemented by correspondence dated August 26, 2004, September 20, 2004, and September 27, 2004, 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 obtained a divorce from her husband, Taxpayer B, in A property settlement agreement was entered into between Taxpayer A and Taxpayer B which provided that Taxpayer B shall transfer an amount from the individual retirement arrangement, IRA X, he maintained with Company O, to an IRA to be established in Taxpayer A's name at Bank B. It has been represented that on July , pursuant to a court order, Amount E was transferred from Taxpayer B's IRA X to Taxpayer A's IRA Y.

Taxpayer A states that, Individual M, the attorney who represented her during the divorce proceedings, advised her to withdraw funds from IRA Y to pay his legal fees and other taxes and penalties. Taxpayer A submitted copies of two checks dated July drawn on Bank B (formerly Bank W); one payable to Individual M and the other payable to the U.S. Treasury. Taxpayer A asserts that she has no knowledge and experience in dealing with finances, investments or taxes and that she relied on the advice and recommendations of Individual M in making the withdrawal from IRA Y.

On March , Taxpayer A went to her accountant, Company P, to prepare her tax return for the tax year Taxpayer A asserts that Company P explained to her that other options were available to her for paying her legal fees and tax obligations rather than withdrawing money from IRA Y. Taxpayer A further asserts that by the time Company P explained other options to her, the 60-day time period for redepositing Amount D back into an IRA had expired. Taxpayer A states that had she been properly advised of the income tax consequences of withdrawing Amount D from IRA Y, she would have pursued other options available to pay her legal fees.

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 D from IRA Y.

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)(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 the 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 section 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.

From the facts submitted, it appears that you used Amount D to pay off a personal debt and other personal financial obligations. It also appears, from the facts submitted, that at the time Amount D was distributed from IRA Y, you did not have the intent to roll over the distribution to another IRA. The Committee Reports describing the legislative intent indicate that Congress enacted the rollover provisions to allow portability between eligible retirement plans, including IRAs. Using a distribution from an IRA to settle personal financial obligations is not consistent with the intent of Congress to allow portability between eligible retirement plans.

Under the circumstances presented in this case, the failure to waive the 60-day rollover requirement would not be against equity or good conscience. Therefore, the request to waive the 60 day rollover period with respect to the distribution of Amount D from IRA X is denied, and Amount D will not be considered a valid rollover contribution under Code section 408(d)(3) because the 60-day requirement was not satisfied.

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 does assumes that IRA X and IRA Y satisfy the requirements of Code section 408(a) of the Code at all times relevant to this transaction. Taxpayer A states that she subsequently transferred amounts in IRA Y to a new IRA she maintains at Company L. This ruling does not address an opinion as to whether Taxpayer A's new IRA meets the requirements of the Code section 408(a), nor does is express an opinion as to the tax consequences, if any, of the trustee-to-trustee transfer of amounts from IRA Y to the new IRA at Company L.

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 ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact ***************************************SE:T:EP:RA:T2.

Sincerely yours,
(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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