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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 408.02-01
408.03-00
9100.00-00

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T:EP:RA:T3

LEGEND:

Taxpayer A =

Company M =

IRA X =

Company N =

IRA Annuity Y =

Bank O =

Bank P =

IRA Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Amount 1 =

Amount 2 =

Dear :

On _____, you submitted a request for letter ruling to the Internal Revenue Service in which you ask the Service to waive to 60-day rollover period requirement found in Section 408(d)(3)(A) of the Internal Revenue Code with respect to a distribution you received of an individual retirement annuity. Your ruling request is based on the following facts and representations.

Taxpayer A formerly maintained IRA X with Company M. On or about Date 1, Taxpayer A received a distribution of the full amount of his IRA X, Amount 1. The next day, Date 2, Taxpayer A purchased an individual retirement annuity, IRA Annuity Y, from Company N, in the amount of Amount 2. Amount 2 consisted of Amount 1 and of his calendar year _____ IRA contribution. Said annuity contract was issued to Taxpayer A on or about Date 3,

Approximately one and one-half months later, on or about Date 4, 2004, Taxpayer A received a check in the amount of Amount 2 from Company N evidencing his cancellation of IRA Annuity Y. Approximately two weeks later, on or about Date 5,

Taxpayer A mailed the check that he received from Company N to Bank P, a subsidiary of Bank O, to purchase a certificate of deposit, IRA Z. Taxpayer A subsequently received documentation from Bank P indicating that his purchase of IRA Z violated the rollover restriction found in Code section 408(d)(3)(B).

Based on the above facts and representations, you request the following letter ruling:

That, pursuant to Code section 408(d)(3)(D) and Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), Taxpayer A is granted a period of time not to exceed 60 days as measured from the date of this letter ruling to accomplish a rollover into an individual retirement account (IRA) set up and maintained in his name of the IRA Y Annuity proceeds he received from Company N on or about Date 4, _____ to the extent said proceeds consisted of Amount 1 previously distributed from IRA X.

With respect to your ruling request, Code section 408(a) provides the general requirements which a trust must meet in order to constitute an individual retirement account (IRA).

Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) 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 account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(B) provides that this paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

Code section 408(d)(3)(I) provides, in relevant part, that the Secretary may waive the 60-day requirement under Subparagraph (A) where the failure to waive the 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) of the Code or 408(d)(3)(I) of the Code, 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.

Code section 408(d)(4) provides that paragraph 408(d)(1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

- (A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,
 - (B) no deduction is allowed under section 219 with respect to such contribution,
- and
- (C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

In this case, Taxpayer A received a distribution totaling Amount 1 from his IRA X on or about Date 1, The next day, Date 2, Taxpayer A purchased IRA Annuity Y from Company N in the amount of Amount 2 which consisted of Amount 1 and an amount equal to his permitted calendar year IRA contribution. No assertion has been made by Taxpayer A that his purchase of IRA Annuity Y contravened the requirements of Code section 408 and, for purposes of this letter ruling, we will assume said contribution constituted a valid "rollover contribution".

Shortly after Date 2, on or about Date 4, Taxpayer A received a check from Company N in the amount of Amount 2 evidencing his cancellation of IRA Annuity Y. This check was received within 1-year of Date 1, and, thus, at least to the extent of Amount 1, was ineligible to be rolled over into an IRA because of the limitation found in Code section 408(d)(3)(B). Although Taxpayer A used the check he received from Company N to purchase a certificate of deposit, IRA Z, from Bank P, he later discovered that the IRA contribution violated Code section 408(d)(3)(B) and, as a result, constituted an "excess contribution" to his IRA Z.

With respect to the ruling requested, Code section 408(d)(3)(I) and Rev. Proc. 2003-16 authorize the Service to extend the 60-day rollover period under certain circumstances. However, the Service may only grant an extension of time to accomplish a rollover where the distribution concerning which the extension is requested was eligible for rollover treatment. In this case, Taxpayer A was ineligible to roll over into an IRA the check that he received from Company N to the extent the check totaled Amount 1. Since Taxpayer A was ineligible to roll over the Amount 1 portion of said check, the 60-day rollover period never attached to Amount 1. Thus, the Service cannot grant an extension of time to complete an action which Taxpayer A could not undertake.

Thus, with respect to your ruling request, we conclude as follows:

Since Taxpayer A was ineligible to roll over into an individual retirement account (IRA) set up and maintained in his name the distribution of the IRA Annuity Y proceeds he received from Company N on or about Date 4, to the extent said distribution totaled Amount 1, he is not granted any period of time to accomplish said rollover of Amount 1.

This ruling letter is based on the accuracy of the facts and representations made in the ruling request.

Any questions regarding this ruling letter should be directed to
Esquire () of this Group. He may be reached at:
(Phone) or (FAX).

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose