



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

OCT 25 2004

Legend:

- Taxpayer A = *****
- IRA X = *****
- Company M = *****
- Individual B = *****
- Amount D = *****
- Amount E = *****
- Individual R = *****
- Account P = *****
- Bank K = *****
- Individual S = *****
- Amount F = *****
- Company H = *****
- Contract J = *****
- Amount G: = *****

Dear *****:

This is in response to your letter dated July 22, 2004, and supplemented by correspondence dated August 24, 2004, and October 18, 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 who is 74 years old established an individual retirement arrangement, IRA X, with Company M in 2002. IRA X was established by Taxpayer A in her own name after the death of her husband, Individual B. Among the IRA X assets was a bond valued at approximately Amount E. Taxpayer A asserts that she was advised by Individual R, her brother and a professional investment advisor, to sell her bonds and invest the proceeds in stock.

Taxpayer A states that, on the advice of Individual R, she directed Company M to sell the bond held in IRA X and distribute the proceeds to her. Taxpayer A asserts that Company M did not advise her that the distribution of the bond proceeds would result in a taxable distribution unless she rolled over the proceeds into another IRA within 60 days.

Taxpayer A represents that on February 5, 2003, she deposited Amount F into Account P, a checking account she maintains at Bank K. (Taxpayer A asserts that the amount deposited into Account P was less than the amount distributed from IRA X (Amount D) because she withdrew her required minimum distribution and had Federal income taxes withheld on that required distribution). Taxpayer A then asserts that she met with Individual S, her financial advisor at Bank K, who recommended that she should invest a portion of Amount F in a tax-deferred annuity (Contract J) she owned with Company H. Documentation submitted with this request indicates that on February 13, 2003, Taxpayer A made an additional contribution to Contract J in the amount of Amount G. Taxpayer A asserts that Individual S was unaware that Amount F came from IRA X, and that he did not ask her about the source of Amount F. Taxpayer A received a Form 1099-R from Company M indicating that a distribution in the amount of Amount D was made to Taxpayer A from IRA X in the [REDACTED] tax year.

Taxpayer A asserts that she did not understand the tax consequences of selling the bond. Taxpayer A further asserts that she never had any intention to use Amount G for current expenses and that she was attempting to maximize her investment returns based on advice she received from Individual R and Individual S. Taxpayer A asserts that she has not used Amount G since it has been

invested in Contract J and Taxpayer A has submitted account statements for Contract J from February 2003 through August 2004 that shows that Contract J has a surrender value in excess of Amount G.

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 G 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 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)(D) provides that if any amount paid or distributed out of an IRA would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent that it is paid into

an eligible plan not later than the 60th day after the day on which the payment or distribution is received.

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 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 submitted in this case indicates that a distribution in the amount of Amount D was made to Taxpayer A from IRA X in 2003. Documentation submitted also indicates that a deposit in the amount of Amount F was made to Account P, a checking account maintained with Bank K, on February 5, 2003. Documentation further shows that on February 13, 2003 Taxpayer A used a portion of the IRA X distribution (Amount G) and invested that amount in Contract J. Taxpayer A asserts that she did not understand the tax consequences of selling the bond and that it was never her intention to take a taxable distribution from IRA X. Taxpayer A further asserts that she relied on the investment advice provided by Individual R and Individual S as to how to invest Amount G to maximize her investment returns. Taxpayer A asserts that Amount G continues to be invested in Contract J and that she has not otherwise used Amount G since it has been invested in Contract J as supported by the account statements for Contract J that shows a surrender value far in excess of Amount G.

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 G. Taxpayer A is granted a period of sixty (60) days from the issuance of this ruling letter to roll over Amount G to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, this amount will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

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

Taxpayer is over 70 ½ and therefore has attained her required beginning date for purposes of Code section 401(a)(9). In this regard, this ruling does not authorize the rollover of any portion of Amount G that may be required to be distributed to Taxpayer A by Code section 401(a)(9).

This ruling assumes that IRA X met the requirements of Code section 408(a) at all times relevant to this transaction.

This ruling 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 ruling has been sent to your authorized representative pursuant to the provision of a Form 2848 (Power of Attorney) on file in this office.

If you have any questions about 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:

Deleted Copy of the ruling letter
Notice of Intention to Disclose