



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

200512028

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

DEC 27 2004

SE. T. EP. PA. TI

Legend:

Taxpayer

Bank M

Account A

Amount 1

Amount 2

Amount 3

Amount 4

Bank N

Bank O

Bank P

Dear:

This letter is in response to a ruling request submitted by your authorized representative dated May 5, 2004, as supplemented by additional information dated November 1, 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").

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

The Taxpayer maintained Account A, an Individual Retirement Account ("IRA") under section 408(a) of the Code with Bank M. The Taxpayer is a widow who, until her husband's death in 2002, depended on him to handle the family's financial affairs. The Taxpayer went to Bank M with the intention of closing Account A and depositing the proceeds with another financial institution in order to generate a greater rate of return. The Taxpayer was not aware that the withdrawal was being made from an IRA and Bank M did not make her aware of this fact.

On May 14, 2003, the Taxpayer withdrew Amount 1 from Account A which represented a total distribution. Bank M distributed the funds to the Taxpayer in three checks. On the same date the Taxpayer deposited Amount 2 into a new account at Bank N, Amount 3 into a new account at Bank O and Amount 4 into an existing account at Bank P. All three accounts were non-IRA accounts and remain intact at the banks where they were deposited.

The Taxpayer became aware of the mistake in April 2004 when during the preparation of her 2003 tax return, her Form 1099-R was discovered by her accountant.

Based on the above facts and representations, you request that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amount 1 because the failure to waive such requirement would be against equity or good conscience.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines, and provides the rules applicable to IRA rollovers.

Code section 408(d)(3)(A) 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,

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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)).

Code section 408(d)(3)(B) 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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) 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).

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.

The Taxpayer intended to change investments by withdrawing the assets of Account A. The Taxpayer was unaware that Account A was an IRA and was not informed of this fact by Bank M. The transferred assets have remained in the non-IRA accounts since their deposit.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Account A. The Taxpayer is granted a period of 60 days from the issuance of this letter ruling to rollover Amount 1 into an IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions 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. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

If you have any questions, please contact [REDACTED]
[REDACTED]

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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