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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG 18 2005

U.I.L. 408.03-00

Legend:

- Taxpayer A = *****
- Taxpayer B = *****
- IRA X = *****
- Bank C = *****
- Account J = *****
- Individual M = *****
- Amount D = *****
- Amount E = *****
- Amount F = *****
- Amount G = *****
- Amount H = *****

Dear *****:

This is in response to your letter dated May 24, 2005, as supplemented by correspondence dated July 15, 2005, 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 eighty-two years old, maintains an individual retirement arrangement, IRA X, with Bank C. In January 2004, Taxpayer A was notified by Bank C that the required minimum distribution amount for 2004 from IRA X was Amount E. Taxpayer A requested Bank C to transfer Amount F (Amount E rounded up) in two installments to Account J, a personal account he also maintains with Bank C. Documentation submitted by Taxpayer A shows that Bank C transferred the first installment in the amount of Amount G (half of Amount F) to Account J on January 15, 2004, and transferred the second installment in the amount of Amount G to Account J on May 28, 2004.

In January 2005, Taxpayer A's accountant discovered that Bank C made an error when it determined that Taxpayer A's required minimum distribution amount for 2004 was Amount E. On March 22, 2005, Individual M, Bank C's Managing Director, notified Taxpayer A, in writing, that Bank C had incorrectly calculated the required minimum distribution amount by using the wrong life expectancy table which resulted in an excess distribution of Amount D from IRA X in 2004. Bank C used the Uniform Lifetime Table instead of the Joint and Last Survivor Expectancy Table in calculating Taxpayer A's required minimum distribution amount for 2004. Taxpayer A's required minimum distribution amount for 2004 should have been Amount H, which is less than Amount E. The excess distribution, Amount D, has not been used by Taxpayer and continues to be held in Account J as supported by account statements submitted by Taxpayer A what show that Account J has consistently maintained a balance in excess of one million dollars.

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 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 any 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 sections 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.

Documentation submitted in this case shows that Taxpayer A received an excess distribution in the amount of Amount D from IRA X in 2004 based on an error committed by Bank C when it incorrectly calculated Taxpayer A's required minimum distribution amount for 2004 by using the Uniform Lifetime Table instead of the Joint and Last Survivor Expectancy Table. Taxpayer A did not intend to take a distribution of Amount D from IRA X. Amount D was distributed to Taxpayer A based on an error Bank C made when it calculated the amount Taxpayer A was required to receive from IRA X in 2004. Taxpayer A relied on Bank C to accurately determine the minimum amount he was required to take from IRA X in 2004 and assumed that Amount E, as calculated by Bank C, was the correct amount he should have received from IRA X for 2004. Taxpayer A had no reason to suspect that Amount D had been distributed in error and did not become aware that an error had been committed in the calculation of his required minimum distribution amount until January 2005, which was beyond the 60-day rollover period applicable to the distribution of Amount D from IRA X.

Documentation submitted by Taxpayer A shows that Amount D was deposited into Account J and continues to be held in that account. In this case, the continuation of payments from IRA X based on using the correct life expectancy table to calculate the required minimum distribution amount would guarantee Taxpayer A retirement income over his life expectancy. 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 D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D 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, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This ruling assumes that IRA X satisfies the qualification requirements of Code section 408 at all times relevant to this transaction.

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 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.

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

Sincerely yours,

~~Signature~~ **JOYCE E. FLOYD**

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice 437