

200436014



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

U.I.L. 408.03-00

JUN 9 2004

Legend:

Taxpayer A = *****
IRA X = *****
Company N = *****
Amount D = *****

Dear *****:

This is in response to your letter dated April 13, 2004, as supplemented by correspondence dated May 19, 2004, June 4, 2004 and June 7, 2004, 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 the ruling requested:

Taxpayer A established IRA X, a custodial account, with Company N on . In March, 2003, Taxpayer A received a notice from Company N requesting the payment of the annual maintenance fee for IRA X. Taxpayer A inadvertently ignored the notice as he had never paid a maintenance fee before on IRA X and assumed that these charges were debits from IRA X and not an invoice requesting the separate payment of annual maintenance fees.

Taxpayer A did not pay the annual account services fee for IRA X. As a result of Taxpayer A's failure to pay the requested fee, Company N closed IRA X on . Taxpayer A asserts that Company N reclassified IRA X as a

non-retirement account and treated such reclassification as a distribution from IRA X. Company N issued a Form 1099-R to Taxpayer A indicating that a taxable distribution in the amount of Amount D was made from IRA X in tax year

Taxpayer A asserts that there have not been any withdrawals or redemption of units from the account that now holds the IRA X assets. Taxpayer A further asserts that the IRA X assets were not distributed to him and that Company N has not issued a check to him. Taxpayer A states that it was never his intention to withdraw assets from IRA X and that the IRA X assets continue to be held with Company N. Company N represents that it will reinstate IRA X after Taxpayer A pays the maintenance fees and further provided that Taxpayer A is granted a waiver of the 60-day rollover requirement.

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 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, 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 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 presented in this case indicates that Company N closed IRA X in _____; for your failure to pay the annual maintenance fees associated with IRA X, and that Company N issued a Form 1099-R to you indicating that a taxable distribution in the amount of Amount D was made to you from IRA X in 2003. You assert that Company N did not distribute the IRA X assets to you or issue a check to you in the amount of Amount D when it reclassified IRA X as a non-retirement account. You assert that it was never your intention to make a withdrawal from IRA X and that there have not been any withdrawals of redemption of units from the account that now holds the IRA X assets since Company N reclassified IRA X as a non-retirement account.

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 sixty (60) days from the issuance of this ruling letter to contribute Amount D to IRA X. 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 herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling assumes that IRA X meets 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.

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

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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