

200438051



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN 22 2004

U.I.L. 408.03-00

Legend:

Taxpayer A =

IRA X =

Company M =

Amount D =

Bank B =

Account G =

Fund V =

Amount E =

Bank C =

Account K =

Amount F =

Dear

This is in response to your letter dated April 20, 2004, as supplemented by correspondence dated June 16, 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 representation have been submitted under penalties of perjury in support of your request:

Taxpayer A's husband, a years old individual, maintained an individual retirement annuity, IRA X, with Company M. Taxpayer A's husband died on . Taxpayer A was a co-primary beneficiary of IRA X as evidenced by Company M's letter submitted with your request.

In , Taxpayer A received a check in the amount of Amount D from Company M representing her interest in IRA X. A deposit slip submitted with your ruling request indicates that on , a deposit in the amount of Amount D was made to Account G at Bank B. Additional documentation submitted with your request indicate that a portion of Amount D was used to purchase shares in Fund V (Amount E), and that the balance was used to purchase four certificates of deposit held in Account K at Bank C (Amount F). (Amount E and Amount F equal Amount D). Taxpayer A submitted an account statement representing that the certificates of deposit are now held in a money market account also at Bank C.

Taxpayer A asserts that her financial adviser did not advise her that Amount D could be rolled over to her IRA account. Taxpayer A further asserts that due to the stress and grief of her husband's death she did not realize that the funds could be transferred to her IRA. Taxpayer A asserts that she did not know that the 60 day rollover period had expired until she met with her accountant in to prepare her tax return for the tax year. Company M issued a Form 1099-R to Taxpayer A indicating that a taxable distribution from IRA X in the amount of Amount D was made to her in .

You further assert that there have not been any withdrawals from Account K or redemption of shares from Fund V and that Amount D continues to be held with Fund V and in Account K.

Based upon the foregoing facts and representation, 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 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 submitted in this case indicates that a distribution in the amount of Amount D was made to you from IRA X in Documentation submitted also indicates that a deposit in the amount of Amount D was made to Account G at Bank B. Further, Taxpayer A has submitted documentation that indicates that a portion of Amount D was used to purchase shares with Fund F (Amount E) and that the balance (Amount F) was deposited into Account K at Bank C. (Amount E and Amount F equal Amount D). Taxpayer A also submitted a recent account statement representing that the certificates of deposit held in Account K are now invested in a money market account also with Bank C. Taxpayer A asserts that there have been no withdrawals from Account K or redemption of shares held by Fund V and that Amount D continues to be held with Fund V and Bank C.

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

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.

A copy of this ruling has been sent to your authorized representative pursuant to the provisions of a Power of Attorney on file in this office.

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

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: