



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

AUG 5 2004

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*T:EP:RA:UK:TJ*

Legend:

- Taxpayer A = \*\*\*\*\*
- Taxpayer B = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Amount E = \*\*\*\*\*
- Amount F = \*\*\*\*\*
- Bank C = \*\*\*\*\*
- Firm B = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- IRA Y = \*\*\*\*\*
- Account G = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your letter dated August 26, 2003, as supplemented by correspondence dated December 5, 2003, February 18, March 4, April 6, April 27, May 28, June 15, June 21, July 2, 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"). Additional information in support of your ruling was submitted to the Service on July 27, 2004 subsequent to a conference of right

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held on July 6, 2004. On July 30, 2004, you asked that your ruling request be modified to address only a portion of the amount distributed from an individual retirement arrangement (IRA).

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

Taxpayer A, who was        years old, maintained IRA X with Firm B. On July 23,       , Taxpayer A made a direct trustee to trustee transfer of Amount D from IRA X to IRA Y, an IRA that Taxpayer A established with Bank C. On September 23,       , Taxpayer A withdrew Amount E from IRA Y and attempted to roll this amount over to IRA X at Firm B, which was now a closed account. In a letter dated October 4,       , Firm B, assuming that Amount E represented a regular IRA contribution, informed Taxpayer A that it was returning the check in the amount of Amount E because Amount E exceeded the regular IRA contribution limits and the deadline for making IRA contributions for the        tax year had expired.

October 3,        Taxpayer A withdrew Amount F, the remaining balance from IRA Y and IRA Y was closed. On October 8,        Taxpayer A deposited Amount E into Account G, a checking account he maintained at Bank C. On this same date, Taxpayer A also deposited Amount F into Account G. Taxpayer A was in poor health and was unable to again attempt to rollover Amount E to an IRA prior to the expiration of the 60-day rollover period. Taxpayer A died on January 7,        In the summer of       , as Taxpayer A's tax return was being prepared, you discovered the IRA distribution(s).

Taxpayer B states that she was the sole beneficiary of IRA Y and the surviving spouse of Taxpayer A. Taxpayer B asks the Service to waive the 60-day rollover requirement so that she can roll over Amount E to an IRA she intends to establish in Taxpayer A's name.

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 60<sup>th</sup> day after the day on which the individual

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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 60<sup>th</sup> 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 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).

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

Section 408(d)(3)(C) of the Code, in general, denies rollover treatment for inherited IRAs. Section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

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 or 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, 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.

In this case, documentation submitted with the ruling request demonstrates that on September 23, Taxpayer A withdrew Amount E from IRA Y and, within 60 days after the day on which Amount E was withdrawn from IRA Y, did attempt to put Amount E into IRA X, the IRA he previously maintained with Firm B. This

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establishes and supports Taxpayer A's intent to roll over Amount E to an IRA. However, Firm B believing that Amount E represented a regular IRA contribution returned the check in the amount of Amount E to Taxpayer A. When this attempt failed, Taxpayer A, upon receipt of the check, deposited Amount E into Account G on October 8, . . . . . Because of his poor health, Taxpayer A did not again attempt to rollover Amount E to an IRA prior to the expiration of the 60-day rollover period, which was November 22, . . . . . Taxpayer A died on January 7, . . . . . without having rolled Amount E to an IRA. Amount E continues to be held in Account G.

You are the surviving spouse of Taxpayer A. Further, you state that you were the sole beneficiary of IRA Y. But for Taxpayer A closing IRA Y prior to his death, as the sole beneficiary of IRA Y and Taxpayer A's surviving spouse, you could have elected to treat IRA Y as your own by designating yourself as the account owner, rolled over IRA Y to an IRA established in your name, or rolled over IRA Y to another IRA established in Taxpayer A's name. You, as Taxpayer A's surviving spouse and the named beneficiary of IRA Y who, but for Taxpayer A's closing IRA Y, could have been treated as the owner of IRA Y upon Taxpayer A's death, can roll over Amount E, the amount which, per documentation submitted with this request was subject to Taxpayer A's intent to rollover, to an IRA established in Taxpayer A's name.

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount E. You are granted a period of 60 days from the issuance of this ruling letter to complete a rollover of Amount E to an IRA in Taxpayer A's name. 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 rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code. Further, this ruling waives the 60-day rollover requirement only with respect to Amount E. No opinion under Code section 408(d)(3) is expressed with respect to the balance of Taxpayer A's IRA funds held in Account G.

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. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact  
\*\*\*\*\*SE:T:EP:RA:T:2.

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