



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

JUN - 9 2004

Legend:

- Taxpayer A = *****
- Company F = *****
- Company R = *****
- IRA X = *****

- Account B = *****

- Account C = *****

- Account D = *****

- Accountant J = *****
- Amount E = *****
- Amount F = *****
- Amount G = *****
- Amount H = *****
- Amount I = *****
- Amount J = *****

Amount K = *****

Dear *****

This letter is in response to a request for a private letter ruling dated September 22, 2003, submitted on your behalf by your authorized representative, as supplemented by correspondence dated January 2, 2004, February 24, 2004, March 2, 2004, and April 14, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3)(I) of the Internal Revenue Code ("Code").

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

Taxpayer A who is _____ years old maintains IRA X with Company F. IRA X is an individual retirement account as described in section 408(a).

On _____, Taxpayer A met with Company F to discuss a rollover transaction with respect to IRA X. Specifically, Taxpayer A desired to transfer certain securities held in IRA X to Account C, a non-retirement account he maintained with Company R. In order to facilitate the transaction, on _____, securities with a fair market value of Amount E were transferred from IRA X to Account B, a non-retirement account established for Taxpayer A at Company F. On _____, in accordance with Taxpayer A's previous instructions, the securities, with a fair market value of Amount F, held in Account B were then transferred from Account B to Account C at Company R. Taxpayer A asserts that it was his intention to transfer the assets transferred to Account C back to IRA X within 60 days.

During _____, Taxpayer A contacted his accountant, Accountant J, to discuss the rollover rules and determine whether he could roll back to IRA X the securities distributed from IRA X on _____, or cash equal to the fair market value of the securities. Taxpayer A asserts that he was told by Accountant J that he could roll over cash in lieu of the securities that were distributed from IRA X but that he should verify this information with Company F.

Taxpayer A subsequently discussed the proposed rollover with Company F personnel. On the basis of the advice received from Company F, Taxpayer A wired cash in the amount of Amount G to IRA X on _____; Taxpayer A wired Amount H, an additional cash deposit to IRA X on _____; and also on _____, deposited cash in the amount of Amount I to IRA X. The three cash deposits made by Taxpayer A to IRA X equaled Amount F, an amount that represents the fair market value of the securities that were transferred from Account B to Account C on _____, not Amount E, the fair market value of the securities distributed from IRA X to Account B on _____.

, or Amount J, the taxable distribution reported by Company F on the Form 1099-R. These cash deposits were made to IRA X outside the 60-day rollover period. Company F issued Taxpayer A a Form 1099-R indicating that a taxable distribution in the amount of Amount J was made from IRA X for tax year .

On , Company F informed Taxpayer A that the rollover of cash to IRA X would not qualify as a tax-free rollover. Taxpayer A asserts that at the time he deposited the cash into IRA X, he held all of the original securities and could have rolled them back to IRA X.

In anticipation of filing this ruling request, Taxpayer A, on , established Account D, a new, non-retirement account at Company F to which he transferred from Account C all of the securities that had previously been distributed from IRA X, with the exception of some securities that he sold on . An account statement for Account D for the month of indicates that a deposit in the amount of Amount K was made to this account in . Taxpayer A asserts that Amount K represents the fair market value of the securities that were previously distributed from IRA X. Also, on , Taxpayer A withdrew all of the assets in IRA X other than and \$ in cash.

Taxpayer A asserts that he never had physical possession of the securities that were distributed from IRA X and that the securities remained in Account C continuously from until when then were transferred to Account D where they are currently held. Taxpayer A further asserts that, with the exception of securities he sold on , he did not otherwise sell, trade, or negotiate the securities held in Account B except to the extent that while the securities were held in Account B they counted toward satisfying applicable margin requirements.

Based on the facts and representations, Taxpayer A has requested that the Service waive the 60-day rollover requirement with respect to the distribution of Amount F 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 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)(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, Taxpayer A initiated a distribution of securities from IRA X. The distribution of securities was made on . Company F issued Taxpayer A a Form 1099-R indicating that a taxable distribution in the amount of Amount J was made from IRA X to Taxpayer A in tax year . Account documentation for IRA X, as submitted with the ruling request, for the months of

and indicate that deposits totaling Amount F were made to IRA X during those months. Such deposits were made to IRA X outside the 60-day rollover period. Taxpayer A asserts that it was his intention when he initiated the distribution from IRA X to roll the distribution back to IRA X within 60 days. Taxpayer A further asserts that at the time he deposited Amount F in IRA X he had the securities previously distributed from IRA X on and that the securities could have been redeposited in IRA X had he been advised to do so.

Taxpayer A, in anticipation of filing this ruling request, established Account D with Company F in . Taxpayer A then transferred the securities held in Account C with Company R to Account D. Account documentation for Account D for the month of indicates that an addition in the amount of Amount K was made to this account during . Taxpayer A asserts that Amount K represents the fair market value of the securities that were distributed from IRA X to Account C, and further asserts that these securities remained in Account C until they were transferred from Account C to Account D. Taxpayer A further asserts that, with the exception of six securities that he sold in , he did not otherwise, trade, sell or negotiate the securities distributed from IRA X. Taxpayer A filed this request for a waiver of the 60-day rollover requirement shortly after he transferred the securities to Account D.

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 securities from IRA X and that Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to rollover the fair market value of the securities held in Account 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 the contribution, we conclude that the 60-day rollover requirement is waived and that a contribution of the fair market value of the securities currently held in Account D will be considered a 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. Further, this ruling does not address the tax consequences of the IRA X assets that remained in IRA X during this transaction, nor does it address the tax consequences of IRA X assets that were not subsequently transferred from Account B to Account C. This ruling is applicable only to the IRA X assets that were actually distributed from IRA X and are currently held in Account D.

Taxpayer A is over 70 1/2 and therefore has attained his required beginning date for purposes of Code section 401(a)(9). In this regard, 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 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 letter ruling is sent to your authorized representative pursuant to provisions of a Power of Attorney on file in this office.

If you have any questions, please contact ***** , at ***** . Please address all correspondence to 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