



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200530032

U.I.L. 408.03-00

APR 18 2005

SE: T: EP: RA: T2

Legend:

- Taxpayer A = *****
- Taxpayer B = *****
- IRA X = *****
- Bank B = *****
- Amount D = *****
- IRA Y = *****
- Bank C = *****
- Amount E = *****
- Account H = *****
- Trust T = *****
- Amount F = *****

Dear *****:

This is in response to your letter dated July 22, 2004, as supplement by
correspondence dated December 15, 2004, March 1, 2005, and March 15, 2005,
submitted on your behalf by your authorized representative, in which you request

200530032

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's spouse, Taxpayer B, died on July 7, 2002. At the time of Taxpayer B's death, she maintained an individual retirement arrangement, IRA X, with Bank B, and an IRA, IRA Y, with Bank C. It has been represented that Taxpayer A is the sole beneficiary of both IRA X and IRA Y. In October 2003, Taxpayer A withdrew the entire balance, Amount D, from IRA X, and the entire balance, Amount E, from IRA Y. Documentation submitted with this request for ruling shows that on October 29, 2003, Amount D, less \$3,000.00, was deposited into Account H. Account H is a joint checking account maintained in the names of Taxpayer A and Taxpayer B with Bank B. Further, documentation submitted by Taxpayer A also shows that on October 30, 2003, he deposited Amount D, less \$3,000.00, into Trust T. Taxpayer B is the grantor of Trust T. Trust T is held by Bank C.

Taxpayer A states that he was not aware that he was not required to withdraw the entire proceeds from IRA X and IRA Y, or, that having withdrawn these proceeds, he could then roll them over to an IRA established in his own name within 60 days. It is asserted that Taxpayer A is an elderly man, and English is not his native language, and that he did not consult with his accountant prior to taking the distributions from IRA X and IRA Y, nor did he fully understand his options with respect to the distributions. During a conference held with the Service on March 1, 2005, it was represented that Taxpayer A's daughter advised him to take the distributions from IRA X and IRA Y.

Taxpayer A states that the distributions from both IRAs were deposited into Trust T and that such amounts, less an amount retained to satisfy the Code section 401(a)(9) required minimum distribution rules, continue to be held in Trust T. In a letter dated March 15, 2005, it is represented that Trust T provides that all of the income of the trust is to be paid to Taxpayer A, not less frequently than quarterly, that principal payments may be paid to Taxpayer A to maintain him in health and comfort, and that during Taxpayer A's lifetime, no principal distribution can be made to anyone other than Taxpayer A.

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, less the amount retained to satisfy the Code section 401(a)(9) required minimum distribution rules, from IRA X, and Amount E from IRA Y.

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

200530032

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.

In this case, Taxpayer A represents that he received distributions from IRA X and IRA Y in 2003 that he deposited into Trust T, a trust that was established in his wife's name, and of which Taxpayer A has a life estate interest. At that time, the IRA distributions became the property of Trust T. In general, the provisions of a trust document govern how property held in that trust is to be distributed and to whom the property should be distributed. Taxpayer A is not the grantor of Trust T and is not considered to be the owner of the property held in Trust T.

Code section 408(d)(3)(I) and Rev. Proc. 2003-16 authorize the Service to extend the 60-day rollover period under certain circumstances. However, the Service may only grant an extension of time to accomplish a rollover where the distribution for which the extension is requested was eligible for rollover treatment. Since the IRA X and IRA Y proceeds are in Trust T, and since Taxpayer A is not the grantor of Trust T, the Service cannot, under its authority to waive the 60-day rollover requirement, permit Taxpayer A to withdraw the IRA proceeds from Trust T for rollover purposes even though the IRA assets were mistakenly contributed to Trust T, unless trust law would otherwise permit a distribution of these assets to Taxpayer A.

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 does assume that IRA X and IRA Y satisfied the requirements of Code section 408(a) of the Code at all times relevant to this transaction.

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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

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

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2