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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

U.I.L. 408.03-00

JUL 23 2004

SE:T:EP:RA:T2

Legend:

Taxpayer A =

IRA X =

Bank B =

Amount D =

Bank C =

Country U =

Country P =

Company F =

Amount E =

Individual M =

Bank G =

Dear

This is in response to your letter dated April 20, 2004, as supplemented by correspondence dated June 2, 2004, July 6, 2004 and July 12, 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 representations have been submitted under penalties of perjury in support of your request:

Taxpayer A maintained IRA X with Bank B. On July . Taxpayer A withdrew Amount D from IRA X and deposited Amount D into an account with Bank C.

On September a check in the amount of Amount D was drawn on Bank C in order to redeposit Amount D into IRA X at Bank B. However, due to banking problems and other restrictions between Country U and Country P, the check was denied as funds were never received from Country U.

A letter submitted by the Senior Financial Advisor of Company F indicates that on November , Taxpayer A attempted to deposit a check in the amount of Amount D into an IRA sponsored by Company F. Company F's representative states that the check was returned on December as non-payable.

On March , with the assistance of Individual M, Taxpayer A's daughter, a wire transfer in the amount of Amount E was made from Bank G to Bank B. In a letter dated July , you state that Bank G acted as a clearing house for the wire transfer of Amount E from Bank C to Bank B. The wire transfer of Amount E was deposited into Taxpayer A's checking account at Bank B as supported by Taxpayer A's checking account statement for March On April , Amount E was transferred from Taxpayer A's checking account at Bank B to IRA X, also at Bank B, as supported by Taxpayer A's Bank B member account statement for . Taxpayer A states that because of the banking restrictions imposed by Country P, he was unable to roll over Amount D to IRA X within the 60-day time period.

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)(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 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 Taxpayer A from IRA X on July Taxpayer A attempted to redeposit Amount D back into IRA X within the 60-day rollover period as supported by the check drawn on Bank C dated September However, account statements further indicate that the check in the amount of Amount D was not negotiated and Taxpayer A's account was debited for a return item because Bank B was unsuccessful in obtaining funds in the amount of Amount D from Country P. Documentation submitted also supports Taxpayer A's intention to redeposit Amount D bank into an IRA as supported by Company F's statement with respect to Taxpayer A's attempt to establish an IRA at Company F. Company F personnel has asserted that it too was unable to obtain Amount D from Country P.

Finally, account statements and documentation submitted also indicate that Amount E was transferred to Bank B from Bank G and deposited into Taxpayer A's checking account on March , and one day later transferred to IRA X where such funds continues to be held.

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. On April 1, 2004, Taxpayer A transferred Amount E to IRA X at Bank B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, is met with respect to such contribution, Amount E 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 the 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. 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 the ruling letter
Notice of Intention to Disclose

cc: