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Advice has been requested whether a transfer of the funds in a participant's individual retirement account (IRA), established under section 408 of the Internal Revenue Code of 1954, from the IRA trustee to a new IRA trustee results in a distribution includible in the gross income of the participant.

In 1975, the participant established an IRA at bank X. In 1976, the entire amount in the IRA was distributed to the individual and rolled over to another IRA at bank Y pursuant to section 408(d)(3) of the Code. In 1977, bank Y transferred the funds in the participant's IRA to a new trustee at bank Z.

Section 408(d)(1) of the Code, added by the Employee Retirement Income Security Act of 1974 [1974-3 C.B. 1, 54] provides that, in general, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity (collectively referred to as IRA) shall be included in gross income by the payee or distributee for the taxable year in which the payment or distribution is received. Section 408(d)(3)(A)(i) of the Code, however, provides that such amount is not includible in the gross income of the individual for whose benefit the account is maintained if the entire amount received (as described in section 408(d)(3)(A)(i)) is paid into another IRA (including a retirement bond) for the benefit of such individual not later than 60 days after receipt of the payment or distribution (a rollover contribution). Section 408(d)(3)(B) limits the frequency of such rollovers to once every three years.

In the instant case, the participant's rollover contribution to bank Y in 1976 would prevent any additional rollover contributions during the three year period described in section 408(d)(3)(B) of the Code. However, the transfer of the IRA funds in 1977 between trustee banks Y and Z did not result in such funds being paid or distributed to the participant. In the absence of payment or distribution, the transfer would not be a rollover contribution described in section 408(d)(3)(A) because such funds are not within the direct control and use of the participant. This conclusion <Page 158> would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

Accordingly, the transfer of the IRA from trustee bank Y to trustee bank Z did not result in a payment or distribution includible in the gross income of the participant.