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

200609019

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 05 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A..

Taxpayer B..

Insurance Company M.............................

Financial Institution N.............................

Individual O..

Amount 1...

IRA X...

Dear :

This is in response to a letter dated July 20, 2005, as supplemented by correspondence dated October 31, 2005, in which you, through your authorized representative, request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). You submitted the following facts and representations under penalties of perjury in support of your request.

On February 3, 2004, Taxpayer A, age 58, took a distribution from IRA X in Amount 1 and deposited Amount 1 into a non-IRA account with Financial Institution N. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to erroneous advice from a financial consultant with Financial Institution N who believed that Amount 1 represented nontaxable life insurance proceeds. Taxpayer A represents that Amount 1 has not been used for any other purpose.

Taxpayer B, Taxpayer A's spouse, maintained IRA X, an IRA annuity issued by Insurance Company M. Taxpayer A was the beneficiary of IRA X. On [redacted], Taxpayer B died. During his lifetime, Taxpayer B had maintained the family finances and worked with Individual O, a representative of Financial Institution N. Individual O died on [redacted]. Following Taxpayer B's death, Taxpayer A reviewed Taxpayer B's assets with another representative of Financial Institution N who told Taxpayer A that the IRA annuity was life insurance. Relying on this advice and an election form completed by the representative of Financial Institution N, Taxpayer A received a lump-sum distribution from IRA X, Amount 1, on February 3, [redacted] On February 12, [redacted] Amount 1 was deposited into Taxpayer A's non-IRA brokerage account with Financial Institution N. The mistake was discovered during the preparation of Taxpayer A's [redacted] tax return in [redacted]

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to the distribution of Amount 1.

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.

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) 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) 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 occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, 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.

The information and documentation, including a statement from Financial Institution N, submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by erroneous advice from her financial consultant.

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 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into an IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3).

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 that 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.

Pursuant to a Power of Attorney on file with this office, a copy of the letter ruling has been sent to your authorized representative.

If you wish to inquire about this ruling, please contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter ruling
Notice 437

cc: