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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 25 2008

Uniform Issue List: 408.03-00

T:EP:RA:T:3

Legend:

Taxpayer A =

IRA X =

Account B =

Year 1 =

Year 2 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

Month 2 =

Company B =

Financial Advisor N =

Amount C =

Dear :

This is in response to letters dated February 22, 2008, and August 14, 2008, 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 penalty of perjury in support of the ruling requested.

Taxpayer A asserts that on Date 3, 2007, he received a distribution from IRA X, an individual retirement account described in section 408 of the Code which taxpayer a maintained with Company B, of Amount C and that his failure to accomplish a rollover of Amount C into a ROTH IRA described in section 408A of the Code was due to errors committed by his financial advisor.

During Month 1 of Year 1 Taxpayer A was forced to retire from his occupation due to a medical disability and began receiving substantially equal periodic payments from IRA X. An annual payment of Amount C was distributed in Month 2 of each year and deposited in Account B, a non-IRA account, which Taxpayer A also maintained with Company B. In Year 2 Taxpayer B signed an authorization for the automatic transfer of each annual payment into Account B.

On Date 2, Taxpayer A, a customer of Financial Advisor N for over twenty years, culminated eleven phone conversations with Financial Advisor N. The phone calls began in the previous month and dealt with the possibility of Taxpayer A's rolling over his annual payments into a Roth IRA. As a result of the Date 2 conversation, Taxpayer A and Financial Advisor N agreed that the automatic transfer of Amount C to Taxpayer A's non-IRA account would not be made until Taxpayer A requested it to be made. Financial Advisor N specifically agreed to take the necessary action to prevent the automatic distribution.

Financial Advisor N failed to take the necessary steps and, contrary to Taxpayer A's instructions, Amount C was distributed and automatically transferred to Taxpayer A's non-IRA account, Account B. During the next five months Taxpayer A was occupied with family medical emergencies and as a result he did not realize that Amount C had been distributed in Month 2. On Date 4, Taxpayer A discovered the error but the 60-day period for a rollover of Amount C into a Roth IRA had expired. Taxpayer A has not used Amount C for any purpose.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount C, contained in section 408(d)(3) of the Code ("the Code").

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

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408A(c) of the Code and regulations thereunder, define and provide the rules applicable to rollovers into Roth IRAs, including the rule that permits amounts from a traditional IRA to be converted to a Roth IRA.

Section 408A(c)(6)(A) of the Code provides that no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

Section 408A(e)(2)(A) of the Code provides that for purposes of section 408A the term "qualified rollover contribution" includes a rollover contribution from an individual retirement plan when such rollover contribution meets the requirements of section 408(d)(3)the Code.

Section 408A(d)(3) of the Code provides rules applicable to rollovers into Roth IRAs from other eligible retirement plans including the rule that permits amounts from a traditional IRA to be converted to a Roth IRA.

Section 408A(d)(3)(A)(i) of the Code provides, in relevant part, that, notwithstanding section 408(d)(3), in the case of any distribution to which this paragraph applies there shall be included in gross income any amount which would be includable were it not part of a qualified rollover contribution. Section 408A(d)(3)(A)(ii) provides that section 72(t) (10-percent additional tax on early distributions from qualified retirement plans) does not apply to a distribution to which section 408A(d) applies. Section 408A(d)(3)(C) provides that a conversion of an IRA, other than a Roth IRA, to a Roth IRA shall be treated as a distribution under section 408A(d).

Section 1.408-4 of the Federal Income Tax Regulations (the "I.T. Regulations"), Question and Answer-1(a), provides that an amount in a traditional IRA may be converted to an amount in a ROTH IRA as long as the modified adjusted gross income requirements of A-2(a) are satisfied, and as long as the amount contributed into the ROTH IRA satisfies the requirements for a rollover contribution found in section 408(d)(3) of the Code.

Section 1.408A-4, of the "I.T. Regulations", Q&A-1(c) provides that a conversion is treated as a distribution from the traditional IRA and a qualified rollover contribution to the Roth IRA for purposes of section 408 and 408A of the Code.

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), 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 presented and documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that his failure to accomplish a rollover of Amount C into a ROTH IRA was due to errors committed by his financial advisor.

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 C from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period not to exceed 60 days as measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount not to exceed Amount C to a ROTH IRA (or IRAs) described in Code section 408A. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution to a Roth IRA within the meaning of Code section 408(d)(3).

This ruling is limited to a request for a waiver of the 60-day rollover period. 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 the regulations which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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.

If you wish to inquire about this ruling, please contact Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose