200904029

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 30 2008

U.I.L. 408.03-00

xxxxx
xxxxx
xxxxx

T:EP:RA:T2

LEGEND:

Taxpayer A = xxxxx

Company M = xxxxx

IRA X = xxxxx

Account Y = xxxxx

Account Z = xxxxx

Bank B = xxxxx

Account C = xxxxx

Amount N = xxxxx

Year 1 = xxxxx

Year 4 = xxxxx

Year 6 = xxxxx

Dear

This is in response to your letter ruling request as submitted, supplemented and amended on your behalf by your authorized representative, in correspondence dated July 2, 2007, and February 25, March 31 and April 8, 2008, as to whether certain after-tax amounts transferred erroneously into a traditional individual retirement arrangement (IRA) represent investment in the contract within the meaning of section 72(e)(6) of the Internal Revenue Code (the "Code") and, as such, can be excluded from gross income in the taxable year in which such amounts are distributed from the IRA.

The following facts and representations are made under penalties of perjury in support of your ruling request.

In Year 1, Taxpayer A maintained IRA X and Accounts Y and Z with Company M, and he maintained Account C with Bank B. IRA X is a traditional individual retirement arrangement described in section 408(a). Accounts C, Y and Z are not IRAs of any type.

In Year 1, Taxpayer A entered into an agreement with Bank B under which assets from Accounts Y and Z totaling Amount N were transferred to Bank B and held in Account C as collateral for a loan.

In Year 4, Bank B released the collateral for the loan and Taxpayer A directed that the assets be transferred to Accounts Y and Z. Instead, Bank transferred the funds to IRA X.

Amount N exceeds the limit on nondeductible contributions to a traditional IRA set forth in section 408(o)(2) of the Code.

Taxpayer A did not discover the error until Year 6, when it was brought to his attention by his tax advisor. By this time, the period for withdrawing excess contributions without penalty had expired. Taxpayer A intends to withdraw Amount N from IRA X in order to avoid further penalty.

Based on the foregoing, you request a ruling that, upon the distribution of Amount N from IRA X, Taxpayer A will be entitled to exclude Amount N from gross income for the taxable year to the extent that Amount N represents an investment in the contract within the meaning of section 72(e)(6) of the Code.

Section 408(d) of the Code deals with the tax treatment of distributions from individual retirement arrangements.

Section 408(d)(1) of the Code provides generally that any amount paid or distributed out of an individual retirement plan 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)(2) of the Code provides, in pertinent part, that for purposes of applying section 72 to any amount described in section 408(d)(1), all distributions during any taxable year are treated as one distribution, and the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

Section 72(a) of the Code provides that gross income generally includes any amount received as an annuity under an annuity, endowment or life insurance contract.

Section 72(e)(2) (B) of the Code provides that when an amount received under an annuity, endowment or life insurance contract is not received as an annuity, and the amount is received before the annuity starting date, the amount is included in gross income to the extent it is allocable to income on the contract, but it is excludable to the extent it is allocable to investment in the contract.

Section 72(e)(6) of the Code provides that investment in the contract as of any date is (A) the aggregate amount of premiums or other consideration paid for the contract before such date, minus (B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income.

Generally, the investment in the contract includes contributions for which no deduction has been taken under section 219 of the Code but does not include contributions for which a deduction has been taken under section 219 of the Code.

Based on the information provided and the representations submitted, Amount N was erroneously contributed to IRA X. However, regardless of the reason for the contribution, Amount N represents an amount of premiums or other consideration paid for IRA X for which no deduction was taken. Accordingly, we rule that, for purposes of determining the amount of any distribution from IRA X that must be included in Taxpayer A's gross income, Amount N is considered "investment in the contract" within the meaning of section 72(e)(6) of the Code, with respect to IRA X.

This ruling assumes that IRA X satisfies the qualification requirements of section 408 of the Code at all times relevant to this transaction.

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.

200904029

This ruling 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 xxxx , I.D. # xxxxx, by telephone at xxxxx, or by fax at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

CC:
xxxxx
xxxxx
xxxxx

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