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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200925046

MAR 27 2009

U.I.L. No. 408.03-00

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LEGEND:

Taxpayer A = XXXXXXXXXXXXXXX
Individual B = XXXXXXXXXXXXXXX
Individual M = XXXXXXXXXXXXXXX
Bank A = XXXXXXXXXXXXXXX
Bank S = XXXXXXXXXXXXXXX
Bank W = XXXXXXXXXXXXXXX
Amount M = XXXXXXXXXXXXXXX
Amount N = XXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX

Dear XXXXXXXXX

This is in response to your request received by the Internal Revenue Service on May 2, 2008, as supplemented by correspondence dated August 26, and November 3, 2008, submitted 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, age 61, represents that he received a distribution of Amount M from IRA X on Date 1 and a distribution of Amount N from IRA Y a few days later on Date 2. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to incorrect advice given him by Bank W which resulted in Amount M and Amount N being deposited into non-IRA accounts. In addition, Taxpayer A asserts that his failure to discover the incorrectness of Bank B's advice was due to his mental and physical conditions which impaired his ability to make financial decisions and manage his financial affairs during the 60-day period with respect to each distribution, thereby impairing his ability to accomplish timely rollovers. Taxpayer A represents further that Amount M and Amount N have not been used for any other purpose.

Taxpayer A represents that he maintained IRA X and IRA Y at Bank W. He further represents that he suffers from a severe disability that affects his verbal and intellectual abilities. In addition, Taxpayer A represents that he relies on his son, Individual B, to assist him in his daily life. Documentation from Taxpayer A's physician supports the assertion that due to his mental condition, Taxpayer A is unable to make sound financial decisions or understand the consequences of his actions.

Prior to Date 1, Taxpayer A and Individual B, met with various financial advisors, including Individual M, a Bank W representative, regarding the withdrawal of amounts from Taxpayer A's IRAs. When they met with Individual M they discussed taxability concerns and asked Individual M to verify that no current income taxes would be owed on the distribution due to Taxpayer A's disability. Individual B requested that Individual M also check with a manager or the corporate office to confirm the taxability concerns. Individual M spoke to several people on the phone and then confirmed incorrectly that no current income tax would be owed.

On Date 1, Taxpayer A received a check from Bank W in Amount M with respect to IRA X. Relying on Individual M's incorrect information, he immediately deposited the check into a savings account at Bank A. On Date 2, Taxpayer A received a second check from Bank W in Amount N with respect to IRA Y. In addition, on Date 2, Taxpayer A deposited Amount N into a savings account at Bank A and transferred Amount M and Amount N plus other assets into three CDs at Bank S. Amount M and Amount N remain invested in the non-IRA CDs. Taxpayer A represents that he did not become aware of the taxability of the distributions until he submitted his year-end tax information to his accountant in Date 3.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount M from IRA X and Amount N from IRA Y contained in section 408(d)(3) of 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.

Revenue Procedure 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 the documentation submitted is consistent with Taxpayer A's assertion that his failure to accomplish timely rollovers of Amount M and Amount N was due to his mental and physical conditions which impaired his ability to make financial decisions and manage his financial affairs during the 60-day period. In addition, his failure to accomplish timely rollovers was due to incorrect information provided by Individual M of Bank W which resulted in Taxpayer A depositing Amount M and Amount N into non-IRA CDs.

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 M from IRA X and Amount N from IRA Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to make rollover contributions of Amounts M and N to an IRA described in section 408(a). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a 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 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.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXX, I.D. XXXXX, at XXXXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

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