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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 24 2011

Uniform Issue List: 408.03-00

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T:EP:RA:T1

Legend:

Taxpayer A	= ****************
Taxpayer B	= ****************
IRA C	= ****************
IRA D	= ****************
Account E	= ****************
Fund F	= ****************
Amount 1	= $****************
Amount 2	= $****************
Amount 3	= $****************
Amount 4	= $****************
Financial Institution X	= ****************

Dear ****************:

This is in response to your submission dated ***************, in which you request a private letter ruling waiving 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 and Taxpayer B are married and file joint Federal Income Tax Returns. Taxpayer A held individual retirement arrangement (IRA) C and Taxpayer B held IRA D.

Taxpayers A and B assert that the failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to unlawful and fraudulent actions on the part of Fund F.

Taxpayer A and Taxpayer B, respectively, represent that on **************, they received distributions from IRA C of Amount 1 and Amount 2 from IRA D in order to roll the funds into more conservative investments. Financial Institution X withheld commissions and fees from the distributions, leaving Taxpayers A and B with Amount 3 and Amount 4, respectively, to roll over. Upon receiving the two distributions, Taxpayer A and Taxpayer B deposited Amount 3 and Amount 4, respectively, into Account E with Fund F, with the intention of rolling the funds to IRAs with in the 60-day period. Taxpayers A and B previously made several other investments into Fund F beginning in 2008. During the 60-day period, federal authorities discovered that Fund F was operating a Ponzi scheme, the funds in Account E were not recoverable and Fund F was placed into receivership.

Based on the above facts and representations, Taxpayer A and Taxpayer B request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement, with respect to Amount 3 and Amount 4, contained in section 408(d)(3) of the Code in this instance.

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 60^{th} 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 60^{th} 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.

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 and Taxpayer B is consistent with their assertion that the failure to accomplish a timely rollover was caused by the fraudulent and illegal actions of Fund F.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 3 and Amount 4 from IRA A and IRA B, respectively. Taxpayer A and Taxpayer B are granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 and Amount 4 into eligible retirement plans or IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 3 and Amount 4 will be considered rollover contributions 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 taxpayers 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 *************** (Identification Number *********) at (***) ***-****. Please address all correspondence to ***************.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1