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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201122032

MAR 8 2011

UIL No. 408.03-00

T:EP:RA:T4

Legend:

Taxpayer A =

Taxpayer B =

Financial Advisor C =

Individual D =

IRA X =

IRA Y =

Plan Z =

Company P =

Account E =

State M =

Amount A =

Amount B =

Date 1 =

Date 2 =

Dear:

This is in response to your request dated April 5, 2010, as supplemented by correspondence dated November 15, 2010 and November 18, 2010, 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 71, and Taxpayer B, age 68 (the "Taxpayers") represent that they received distributions from IRA X totaling Amount A, and IRA Y totaling Amount A (collectively Amount B). The Taxpayers assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to incorrect advice they received from Financial Advisor C, and that Amount B has not been used for any other purpose.

Prior to their retirement, the Taxpayers were participants in Plan Z. Upon retirement, the Taxpayers liquidated their qualified plan accounts. Taxpayer A rolled the liquidated funds over into IRA X, and Taxpayer B rolled the liquidated funds over into IRA Y.

Financial Advisor C, a licensed and practicing accountant in State M, was the Taxpayers' financial advisor for more than twenty years. Financial Advisor C advised the Taxpayers that funds in IRA accounts are not as secure against third party creditor claims as funds in tax qualified plans, and that they could achieve a tax free rollover of Amount A from IRAs X and Y back into Plan Z.

On Date 1, the Taxpayers, acting on the advice of Financial Advisor C, requested a distribution of Amount A from IRAs X and Y, and deposited Amount B into Account E. The Taxpayers then directed Individual D, the human resources manager at Company P, to transfer Amount A from Account E into each Taxpayer's account in Plan Z.

The Taxpayers assert that on Date 2, Individual D learned from the plan administrator that the Taxpayers were not eligible to make a rollover contribution to Plan Z because they were no longer participants in the Plan. The Taxpayers further represent that Individual D did not inform them that they could not make the rollover contribution until after the expiration of the 60 day period contained in section 408(d)(3) of the Code. Documentation provided indicates that the Taxpayers received incorrect advice from Financial Advisor C.

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

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((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 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 the Taxpayers is consistent with their assertion that their failure to accomplish a timely rollover was caused by incorrect advice they received from Financial Advisor C.

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 A from IRAs X and Y. The Taxpayers are granted a period of 60 days from the issuance of this ruling letter to contribute each amount to a Rollover IRA. 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 A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 ruling letter has been sent to your authorized representative in accordance with power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at *** or ***(FAX). Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Virginia Dun

for Frances V. Sloan, Manager
Employee Plans, Technical Group 3

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: