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

201143029

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Uniform Issue List: 408.03-00

AUG 01 2011

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T:EP:RA:T3

Legend:

Taxpayer A	= XXXXXXXXXXXXXX
Individual B	= XXXXXXXXXXXXXX
Financial Institution F	= XXXXXXXXXXXXXX
Financial Institution S	= XXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXX XXXXXXXXXXXXXX XXXXXXXXXXXXXX
Amount A	= XXXXXXXXXXXXXX
Form A	= XXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXX
Year 1	= XXXXXXXXXXXXXX
Year 2	= XXXXXXXXXXXXXX

Dear XXXXXXXXX:

This letter is in response to your request for a letter ruling dated April 27, 2011, as supplemented by additional correspondence dated July 8, 2011, submitted by your authorized representative on your behalf, 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 69, represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) was due to the fraudulent misrepresentation by Individual B that Financial Institution S could act as custodian for self-directed IRAs.

Taxpayer A represents that until Year 1, all of his retirement funds were invested in IRA X. To diversify his investments he intended to withdraw a portion of IRA X and rollover that amount to a self-directed IRA. After considerable research, he chose Financial Institution S, an investment advisory fund, whose president was Individual B. Individual B represented that Financial Institution S had been providing financial advisory services since 1972 and assured Taxpayer A that it was a qualified IRA custodian and as such was qualified to handle self-directed IRAs. Based on this assurance, Taxpayer A withdrew Amount A from IRA X and established a self-directed IRA with Financial Institution S. On Date 1, to effectuate the rollover Taxpayer A completed Form A which authorized a trustee-to-trustee transfer of Amount A to a self-directed IRA at Financial Institution S. On Date 2, Amount A was transferred by Financial Institution F to Financial Institution S.

In Year 2, a federal investigation uncovered a scheme by Financial Institution S and Individual B to defraud investors in a Ponzi scheme. Offering self-directed IRAs was a part of this scheme. Individual B was indicted by the United States Attorney's office. Individual B pled guilty and was convicted in a U.S. District Court on charges of securities and mail fraud in connection with the theft of money collected through Financial Institution S, including self-directed IRA asset management accounts as part of the scheme. As part of the criminal proceedings against Individual B, the U.S. Attorney's office sought forfeiture of all assets under the control of Financial Institution S and Individual B to apportion and distribute the assets among all of the defrauded investors in an equitable manner. Taxpayer A was unaware of the fraud until he received a victim notification from the U.S. District Court. On Date 3, Taxpayer A obtained legal representation when it was discovered that Financial Institution S was engaged in a Ponzi scheme. Documentation submitted shows that Individual B pled guilty and was convicted in U.S. District Court on charges of securities and mail fraud in connection with the theft of investment funds, including self-directed IRAs.

Based on the facts and representations, you request a ruling that the Internal Revenue 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 IRA X.

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.

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 his assertion that his failure to accomplish a timely rollover was due to the fraudulent misrepresentation by Individual B that Financial Institution S could act as custodian for self-directed IRAs.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount A. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A 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 valid 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 XXXXXXXXXXXX (ID XX-XXXXX) at (XXX) XXX-XXXX. Please address all correspondence to

Sincerely,

Ada Perez

for Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

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