

200912040



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

DEC 23 2008

U.I.L. 408.03-00

SE:T:EP:RA:T4

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer A = XXXXX

Company C = XXXXX

Individual D = XXXXX

IRA X = XXXXX

Amount N = XXXXX

Year 1 = XXXXX

Year 6 = XXXXX

Year 7 = XXXXX

Date 1 = XXXX

Dear XXXXX:

This is in response to your letter ruling request dated June 12, 2008, as amended and supplemented by correspondence dated September 22, 2008, submitted on your behalf by your authorized representative, for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

XXXXX

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Taxpayer A, age 58, maintains IRA X, a traditional individual retirement arrangement (IRA), with Company C. In Year 1 Taxpayer A began receiving from IRA X one payment of Amount N per month, an arrangement that was intended to satisfy the requirements of Code section 72(t)(2)(A)(iv) as a series of substantially equal periodic payments. On Date 1 following a consolidation of IRA X from five mutual funds with five different account numbers to an IRA with a single account number, one additional payment of Amount N was distributed from IRA X. As with every other payment of Amount N from IRA X, Company C deposited this additional payment directly into Taxpayer A's checking account. When Taxpayer A became aware of the additional payment and brought it to the attention of Individual D, a financial advisor and registered representative with Company C, Individual D informed Taxpayer A that, although Company C had distributed an additional payment to Taxpayer A, no action had to be taken by Company C or by Taxpayer A. Taxpayer A relied upon this advice. Taxpayer A retained the additional payment and took 13 payments of Amount N into gross income for the Year 6 taxable year, one payment more than the 12 monthly payments of Amount N he had received every year for each of the four years immediately prior to Year 6. In Year 7, Taxpayer A learned that the advice Individual D had provided him, and upon which Taxpayer A had relied, was erroneous. He immediately contacted Individual D. Company C conducted an internal investigation which concluded that Individual D had given Taxpayer A incorrect advice. To date, the additional payment remains in the checking account into which Company C deposited it.

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of the additional payment of Amount N 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) 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)(l) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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)(l).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(l), 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 demonstrates that Taxpayer A failed to accomplish a timely rollover of Amount N because he relied upon erroneous advice from a financial advisor regarding an error committed by a financial institution. The funds distributed from IRA X have remained deposited in Taxpayer A's checking account.

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of the additional payment of Amount N from IRA X in Year 6. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N back into IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to Amount N, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling is limited to a request for a waiver of the 60-day rollover period. No opinion is expressed as to whether the payments from IRA X to Taxpayer A constitute substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv). Further, no opinion is expressed as to whether the extra payment by Company C to Taxpayer A, or the exercise of this waiver of the 60-day rollover period by Taxpayer A would cause a modification of substantially equal periodic payments within the meaning of Code section 72(t)(4). Finally, 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.

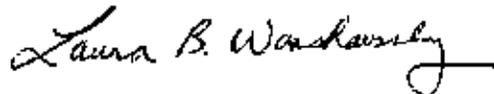
This ruling assumes that IRA X satisfies the qualification requirements of section 408 of the Code at all times relevant to this transaction.

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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXX, I.D. # XXXXX, by telephone at -XXXXX, or by fax at -XXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



XXXXX, Acting Manager
Employee Plans Technical Group 4

cc: XXXXX
XXXXX
XXXXX

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose