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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 30 2010

Uniform Issue List: 408.03-00

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XXXXXXXXXXXXXXX

SE:T:EP:RA:T2

Legend:

Taxpayer A	XXXXXXX
Financial Advisor F	XXXXXXX
Financial Institution M	XXXXXXX
Financial Institution N	XXXXXXX
IRA X	XXXXXXX XXXXXXX
Account Y	XXXXXXX XXXXXXX
Amount R	XXXXXXX
Amount S	XXXXXXX
Date 1	XXXXXXX
Date 2	XXXXXXX
Date 3	XXXXXXX

Dear XXXXXXX:

This is in response to a request submitted on your behalf by your authorized representative dated June 18, 2009, as supplemented by information received during our conference on September 8, 2009 and additional correspondence submitted on September 17, 2009, 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 **, represents that she received a distribution from IRA X held by Financial Institution M totaling Amount R. Taxpayer A asserts that her failure to accomplish a rollover of Amount R within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Financial Advisor F, Financial Institution M and Financial Institution N. Taxpayer A represents that Amount R has not been used for any other purpose.

Taxpayer A represents that there was a long-standing banking relationship between Financial Advisor F (an authorized agent of Financial Institution M) and her late husband. Before his death, he was responsible for taking care of financial issues in the household. Following his death, Taxpayer A relied heavily on the advice of Financial Advisor F because she had limited understanding of financial matters and her husband had trusted Financial Advisor F when he was alive. On Date 1, Taxpayer A contacted (by telephone) an advisor at Financial Advisor F to discuss options with regard to transferring Amount R from IRA X into a more conservative tax-deferred retirement account because of the downturn in the financial markets. This was the extent of her conversation with the representative from Financial Advisor A. She did not complete any documentation or request a distribution at that time.

On Date 2, Taxpayer A received a check in the mail totaling Amount R (the entire balance of IRA X) and a separate check totaling Amount S from a non-IRA account that was also held at Financial Institution M (Amount S is not the subject of this ruling and has significance only in that it was received on the same date and from the same financial institution that is involved in this ruling). Following her receipt of the checks in the mail from Financial Institution M, Taxpayer A contacted Financial Advisor F by telephone and inquired whether the transaction had been accomplished properly and with no tax penalties. An individual she spoke with at Financial Advisor F told her that the transaction had been handled in an appropriate manner and told Taxpayer A not to worry about it because "she wouldn't understand anyway".

On Date 3, Taxpayer A took the checks to Financial Institution N and deposited Amount R into Account Y. Account Y is a non-IRA account that was previously established at Financial Institution B for Taxpayer A to be able to withdraw money for everyday expenses. Taxpayer A intended to deposit Amount R into a tax-deferred retirement account. Instead, however, the teller at Financial Institution N completed a deposit slip for her and deposited the checks into Account Y. Taxpayer A did not speak with an officer of the bank nor was it recommended that she do so by anyone at Financial Institution N, despite the large deposit she was making.

Taxpayer A states that it was her intent to complete a rollover of Amount R within the statutorily required 60-day period. At the time of this request, Amount R remains in Account Y.

Taxpayer A has provided documentation showing that representatives from Financial Advisor F and Financial Institution M were aware it was her intent to accomplish a timely and proper IRA rollover. Taxpayer A has provided documentation reflecting that representatives of Financial Advisor F and Financial Institution M knew Amount R represented IRA funds that Taxpayer A wanted to move into another tax deferred IRA account. Taxpayer A also provided documentation from Financial Advisor F indicating that they contacted Financial Institution N to obtain a direct rollover form; however, Financial Institution N did not have any such documents to provide them. As such, Financial Institution M distributed the funds to Taxpayer A so she could take the check to Financial Institution N and complete the necessary rollover forms there, but failed to advise her to do so.

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 A 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 maybe, 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) (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 section 408 (d) (3) (A) 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) of the Code, 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 Taxpayer A submitted is consistent with her assertion that her failure to accomplish a timely rollover was caused by a collective error committed by Financial Advisor F, Financial Institution M and Financial Institution N.

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 R from IRA X. You are granted a period of 60 days from the issuance of this letter ruling to contribute Amount R into 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 R 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, made applicable to IRAs pursuant to section
408 (a) (6).

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 expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you have any questions regarding this ruling, please contact XXXXXXX (ID # **********) at (***) ***-****. Please address all correspondence to XXXXXXX.

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:
Notice of Intention to Disclose

CC: XXXXXXX