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

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 27 2011

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A:

IRA X:

Plan Y:

Amount M:

Employer A:

Investment Advisor L:

Trustee F:

Financial Institution M:

Date 1:

Date 2:

Date 3:

Date 4:

Dear :

This is in response to your request dated November 3, 2010, as supplemented by letters dated February 10, 2011, May 9, 2011, June 28, 2011, July 14, 2011,

August 9, 2011, September 1, 2011, and September 7, 2011, submitted on your behalf by your authorized representative, in which you request a ruling to waive 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 maintained an Individual Retirement Account (IRA), IRA X with Financial Institution M. Taxpayer A, under age 59 1/2, asserts that on Date 1, a check in Amount M was issued to Taxpayer A and that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to his reliance on Investment Advisor L and Trustee F and the failure of Investment Advisor L to provide the accustomed level of advice and the failure of Trustee F to act timely on the rollover. Taxpayer A further represents that Amount M has not been used for any other purpose.

Taxpayer A began his relationship with Investment Advisor L in year 2001 when he was leaving a former employer, Employer A. At that time Taxpayer A had a qualified plan at Employer A that he wanted to roll over to an IRA. Investment Advisor L handled all aspects of the rollover to IRA X at that time. Taxpayer A, subsequently relied on Investment Advisor L to handle all matters related to his IRA account. Taxpayer A met quarterly with Investment Advisor L to discuss investment strategies. Taxpayer A was accustomed to signing whatever needed to be signed and depended on Investment Advisor L to handle matters in the correct fashion. This relationship continued, was consistent, and benefited Taxpayer A because he was not educated in the technicalities of investments.

Taxpayer A represents that in late 2008 he spoke with Investment Advisor L and asked him to move Taxpayer A's money out of the stock market because Taxpayer A was concerned about the loss of value in his investments. Taxpayer A asserts that Investment Advisor L ignored his requests and that finally Taxpayer A called Investment Advisor L and told Investment Advisor L to close the account and send him a check. The check was sent during November. Taxpayer A did not cash the check and put the check with his tax information intending to roll it into his current employer's 401(k) plan, Plan Y.

On Date 2 (prior to the expiration of the 60-day rollover period) Taxpayer A contacted Trustee F, the trustee for Plan Y, and explained that he had a check from IRA X dated Date 1, and that he planned to roll it into Plan Y. Taxpayer A asserts that the Trustee F representative listened and said "okay" and told him to fill out the investment choices in the kit that they would send him. Trustee F issued the kit in a package mailed on Date 3, the date of the expiration of the 60-day rollover period. The package was addressed to Taxpayer A's residence and mailed in a general delivery non-priority mail package.

Taxpayer A completed the forms mailed to him in the kit from Trustee F, enclosed the check from IRA X in Amount M, and sent the package to Trustee F.

Trustee F subsequently accepted the check for Amount M and completed the rollover of the Amount M check into Plan Y on Date 4 (a date after the expiration of the 60-day rollover period).

Taxpayer A filed a joint return for year 2008 and did not include the Amount M distribution from IRA X as taxable income. Taxpayer A was later notified by the IRS that Amount M should be included in taxable income for year 2008.

You submitted documentation establishing that you contacted Trustee F on Date 2 for the purpose of completing a rollover of Amount M into Plan Y. You also provided copies of the post marked package mailed to you on Date 3.

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 M.

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.

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 the failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to his reliance on Investment Advisor L and Trustee F and the failure of Investment Advisor L to provide the accustomed level of advice and the failure of Trustee F to act timely on the rollover. Taxpayer A further represents that Amount M has not been used for any other purpose.

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 M from IRA X. Pursuant to this ruling letter, the contribution of Amount M to Plan Y will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

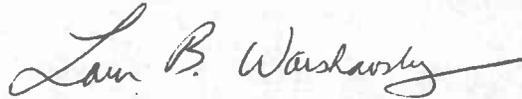
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 in accordance with a power of attorney on file in this office.

If you have any questions, please contact XXXXXXXXXXXXXXXX XXXXXXXX

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

- Deleted Copy of Ruling Letter
- Notice of Intention to Disclose

cc: XXXXXXXXXXXXXXXX
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