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

200919066

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

FEB 13 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A

Taxpayer B

IRA A

IRA B

Company M

Company N

Company P

Amount A

Amount B

Dear:

This letter is in response to a request for a letter ruling dated February 15, 2007, as supplemented by correspondence dated October 18, 2007, from your authorized representative, in which you request 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 have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 51, and Taxpayer B, age 47, are married and file a joint income tax return. They represent that they respectively received a distribution from IRA A totaling Amount A and IRA B totaling Amount B on June 19, 2006. Taxpayers A and B assert that their failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to incorrect advice provided by Companies M and N.

Company N advised Taxpayers A and B that they could use their IRAs to invest in Company P, a real estate development limited partnership, by performing a self directed IRA real estate investment. Company N also advised Taxpayers A and B to ask Company M for instructions to accomplish a self-directed IRA rollover. Taxpayers A and B asked Company M for instructions and in doing so specifically informed Company M that the distribution is intended to be a nontaxable self-directed IRA rollover. Based on Company M's advice, Taxpayers A and B completed paperwork provided by Company M on June 2, 2006, intending to respectively transfer Amount A from IRA A and Amount B from IRA B to Company P via a nontaxable IRA rollover.

Taxpayers A and B each received a check made out to them, Amount A and Amount B respectively, from Company M dated June 19, 2006. Company M instructed Taxpayers A and B that they could wire or deliver the funds to Company P themselves. Taxpayers A and B then endorsed their checks to Company P and delivered them to Company P's agent, Company N, who deposited the checks into Company P's bank account on June 26, 2006. Company N reassured Taxpayers A and B that this process was appropriate for the rollovers. When Taxpayers A and B asked if they needed to do anything else to ensure the rollovers were properly accomplished, Company M failed to advise Taxpayers A and B that the receiving account for these rollovers must be qualified IRA accounts.

Taxpayers A and B discovered that Amounts A and B which were distributed from IRA A and IRA B, respectively, were taxable distributions when they received their respective Forms 1099R in January 2007. Taxpayers A and B did not use Amounts A and B for any other purpose and Amounts A and B are still in the possession of Company P.

Based on the above facts and representations, Taxpayers A and B request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of Amounts A and B because they did not discover that Company M and N's advice caused Amounts A and B to be taxable distributions until they received Forms 1099R during January 2007, after the 60-day rollover period had expired.

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 the documentation submitted by Taxpayers A and B is consistent with their assertion that their failure to accomplish a timely rollover was caused by incorrect advice provided by Companies M and 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 A from IRA A and

Amount B from IRA B. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts A and B into respective Rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amounts A and B will be respectively considered rollover contributions 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 that may be applicable thereto.

This letter is directed only to the taxpayers 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 ruling has been 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 at

Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: