201227010

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

APR 12 2012

T:EP:RA:T2

XXX
XXX
XXX

Legend:

Taxpayer A	= XXX
Amount 1	= XXX
Date 1	= XXX
Date 2	= XXX
Financial Advisor G	= XXX
Financial Institution A	= XXX
Financial Institution B	= XXX
Financial Institution C	= XXX
Fund C	= XXX
IRA P	= XXX
IRA Q	= XXX
IRA R	= XXX
Account V	= XXX

Dear XXX:

This is in response to your request submitted on your behalf by your authorized representative dated February 1, 2011, as supplemented by correspondence submitted on your behalf by your authorized representative dated December 6, 2011, and January 12, 2012, 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 70, received a distribution of Amount 1 from IRA P. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to her reliance on erroneous advice provided by Financial Advisor G. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A decided to change her investments in IRA P. Financial Advisor G presented Taxpayer A with a loan investment opportunity. Taxpayer A moved Amount 1 out of IRA P at Financial Institution A in order to take advantage of this opportunity through self-directed IRA Q at Financial Institution B. Taxpayer A entrusted the transfer of Amount 1 to Financial Advisor G.

Instead of depositing Amount 1 into IRA Q, then investing in the loan opportunity with Fund C, Financial Advisor G and a representative of Fund C deposited the distributed assets of IRA P directly into Fund C's Account V, a non-IRA account, with Financial Institution C. Then Financial Representative G and a representative of Fund C used the deposited amounts in Account V to purchase investment notes from Fund C directly. IRA Q would not accept the investment notes of Fund C and required that any assets within the self-directed IRA Q be purchased with funds already within IRA Q. By the time Financial Advisor G realized his error, the 60-day period to complete the tax-free rollover had expired. This transaction resulted in Taxpayer A failing to deposit the distributed Amount 1 into IRA Q within 60 days of the distribution from IRA P.

Financial Advisor G has acknowledged, in writing, that he provided erroneous advice because he misunderstood the procedures for acquiring the investment notes of Fund C and placing them within a self-directed IRA.

Upon discovery that Amount 1 was not invested in IRA Q, Taxpayer A arranged to deposit Amount 1 into a self-directed IRA at Financial Institution C. On Date 2, Taxpayer A deposited Amount 1 into IRA R at Financial Institution C.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to Amount 1 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 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)(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 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.

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 submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was caused by her reliance on erroneous advice provided by Financial Advisor G, resulting in the failure to deposit Amount 1 into IRA Q within 60 days after being distributed from IRA P.

Therefore, pursuant to section 408(d)(3)(A) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 from IRA P. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such the contribution of Amount 1, into IRA R, such contribution 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.

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 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 XXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager
Employee Plans Technical Group 2

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

CC:
XXX
XXX
XXX