TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201235027

Uniform Issue List: 408.03-00

JUN 8 2012

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T:EP:RA:T2

Legend:

Taxpayer A	XXX
Financial Institution B	XXX
Financial Institution C	XXX
Financial Institution D	XXX
Financial Institution E	XXX
Financial Institution F	XXX
IRA X	XXX
Account Y	XXX
Account Z	XXX
Financial Advisor G	XXX
Individual H	XXX

Amount 1	XXX
Amount 2	XXX
Amount 3	XXX
Amount 4	XXX
Amount 5	XXX
Amount 6	XXX
Amount 7	XXX
Date 1	XXX
Date 2	XXX
Date 3	XXX
Date 4	XXX
Date 5	XXX
Date 6	XXX
Date 7	XXX

Dear XXX:

This letter is in response to your request dated February 24, 2012, submitted on your behalf by 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 (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, 60 years old, represents that on Date 1, he entrusted the rollover of Amount 1 from IRA X at Financial Institution B to Financial Advisor G, a representative of Financial Institution E. Taxpayer A asserts that his 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 an error made by Financial Institution E, through its representative, Financial Advisor G.

Taxpayer A represents that on Date 1, he met with Financial Advisor G to discuss three financial transactions: 1) rolling over Amount 1 from IRA X at Financial Institution B to a new IRA at Financial Institution D; 2) refinancing his home mortgage with Financial Institution F; and 3) using Amount 2 from non-qualified Account Y at Financial Institution C to pay off the home equity portion of the mortgage. Amount 1 and Amount 2 were similar sums.

In the process of completing Taxpayer A's application for a new IRA at Financial Institution D, Financial Advisor G mistakenly referred to and used the documentation provided for Account Y, the non-qualified account, instead of referring to the documentation provided for IRA X. On Date 2, Financial Institution E notified Financial Advisor G that the IRA contract could not be processed because he submitted documentation from a non-qualified account. On Date 3, Financial Advisor G submitted to Financial Institution E a revised application for a new non-qualified account at Financial Institution D. Financial Institution D established non-qualified Account Z, on behalf of Taxpayer A. On Date 4, Financial Institution C cancelled Account Y, Taxpayer A's non-qualified annuity, and transferred Amount 3, the funds remaining in the account after the deduction of the surrender charge, Amount 4, from that annuity, to Account Z, the non-qualified account established at Financial Institution D on Date 5.

Taxpayer A believed that Financial Advisor G had set up a new IRA at Financial Institution D for him and rolled over Amount 1 into it. On Date 6, Taxpayer A cancelled his remaining annuity, IRA X, which he thought was the non-qualified account, Account Y. At that time, Financial Institution B issued a check to Taxpayer A for Amount 5, all of the funds remaining in IRA X after deducting Amount 6, the applicable annual fee and surrender charge. Believing that Amount 5 was taken from non-qualified Account Y, Taxpayer A used it, in conjunction with other personal funds, to pay off the home equity portion of his home mortgage, Amount 7, at Financial Institution F.

Taxpayer A was unaware of the error until Date 7, when his tax advisor informed him that he owed taxes on the distribution of Amount 1 from IRA X. Taxpayer A then contacted Financial Institution E regarding IRA X and Account Y. After researching Taxpayer A's account, Financial Institution E discovered and Financial Advisor G admitted to Financial Institution E that: 1) he believed that he was applying for an IRA with Financial Institution D on behalf of Taxpayer A; 2) Financial Institution E had contacted Financial Advisor G and informed him that an IRA could not be issued if Financial Institution D was to receive non-qualified funds, as indicated on the annuity application; and 3) Financial Advisor G, inadvertently, revised the annuity application, resulting in: (A) Financial Institution D issuing Account Z as a non-qualified account, rather than as an IRA; (B) the transfer of the non-qualified funds into Account Z, rather than the transfer of the qualified funds into it; and (C) Taxpayer A liquidating the remaining qualified account, IRA X, rather than the non-qualified account, Account Y. Taxpayer A submitted a sworn affidavit from Individual H, acting Vice-President of Financial Institution E, stating: (1) Financial Institution E received qualified funds from Financial Institution B on behalf of Taxpayer A prior to the expiration of the 60-day rollover period; (2) Taxpayer A followed all procedures indicated as required by Financial Institution E for deposit of such funds into what Taxpayer A believed to be an IRA within the 60-day roll-over period (including giving instructions to deposit the funds into an IRA); and (3) solely due to an error on the part of Financial Institution E, through its representative, Financial Advisor G, Amount 1 was not deposited into an IRA within the 60-day roll-over period.

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 1 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) 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 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 submitted by Taxpayer A, including a sworn affidavit by Individual H stating that the failure of Amount 1 to be rolled over to an IRA within the 60-day rollover period was due solely to error by Financial Institution E, through its representative, Financial Advisor G, is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error made by Financial Advisor G, which resulted in Amount 1 being deposited into Account Z, a non-IRA account.

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 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 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 1 will be considered a 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 pursuant to a Power of Attorney on file in this office.

201235027

If you wish to inquire about this ruling, contact XXXX 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
XXX