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

200419031

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Index No. 408.03-00

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T:EP:RA:UK

LEGEND:

Taxpayer A	=	***
IRA X	=	Individual Retirement Account Account # ***
Company M	=	***
Amount N	=	***
Amount O	=	***
Amount P	=	***
Amount Q	=	***
Amount R	=	***
Amount S	=	***
Amount T	=	***
Amount U	=	***
Amount V	=	***
Amount W	=	***

Dear ***:

This is in response to a letter dated March 6, 2003 and supplemented with correspondence dated July 24, 2003, October 22, 2003, January 9, 2004, January 28, 2004, and February 2, 2004 submitted by your authorized representative for a ruling concerning the waiver of the 60-day rollover requirement, as permitted by Internal Revenue Code (the "Code") section 408(d)(3)(I).

Your authorized representative submitted the following facts and representations:

In October 1999, Taxpayer A began a series of substantially equal withdrawals from IRA X, which were designed to comply with Code section 72(t)(2)(A)(iv). The payments were computed based upon the December 31, 1998 balance of Amount N. Using the fixed annuitization method based upon age 54, an interest rate of 9.9%, and the UP-1984 mortality table, an annual withdrawal of Amount O was computed. From October 1999 through February 2002, Taxpayer A withdrew monthly payments of Amount P from IRA X.

As of December 31, 2001, Taxpayer A's IRA X account balance had decreased to Amount Q. Taxpayer A realized that if she continued to make withdrawals at the same annual rate, her retirement account would become depleted and she would not have sufficient funds for her retirement. Taxpayer A changed the monthly withdrawal to Amount R per month, from March 2002 through July 2002. At the end of July 2002, Taxpayer A had withdrawn Amount S.

In October 2002, the IRS issued Rev. Rul. 2002-62, which, in part, addressed the issue of taxpayers who had seen a decline in their account balances while taking withdrawals under Code section 72(t)(2)(A)(iv). Rev. Rul. 2002-62, in part, allows taxpayers who have computed withdrawals under Code section 72(t)(2)(A)(iv) utilizing either the fixed amortization or the fixed annuitization method, a one time election to switch the computation to the required minimum distribution method. The required minimum distribution method requires an annual computation based upon the current market value on a valuation date, and the life expectancy of the taxpayer.

Using the required minimum distribution method, Taxpayer A determined that, based upon the December 31, 2001 IRA X account balance of Amount Q, and a single life expectancy factor of 27.9 (which was based upon Taxpayer A's attained age of 57 in 2002), Taxpayer A's required minimum distribution for 2002 would equal Amount T. As of the date of the issuance of Rev. Rul. 2002-62, Taxpayer A had already received Amount S from IRA X.

Uncertain as to the effect of stopping distributions from IRA X subsequent to the issuance of Rev. Rul. 2002-62, and to avoid the possible retroactive imposition of the ten percent additional tax on all prior distributions from IRA X, Taxpayer A withdrew Amount U from IRA X in December 2002, thus making Taxpayer A's total distribution from IRA X for 2002 Amount O, the amount originally calculated using the fixed annuitization method. On January 6, 2003, Taxpayer A returned Amount V to IRA X. The returned funds were intended to be a rollover, resulting in a net distribution from IRA X for calendar year 2002 of Amount T, the amount determined under the required minimum distribution method.

Based on the foregoing facts and representations, the following ruling has been requested:

> That Amount V, which was returned to IRA X on January 6, 2003, is a valid rollover contribution under Code section 408(d)(3)(A), despite the fact that Amount W of such Amount V was returned to IRA X more than sixty days after the date the amounts were distributed 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 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, 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.

As previously mentioned, in October 2002, the Service issued Rev. Rul. 2002-62, which allowed taxpayers who began distributions in a year using the fixed annuitization method or fixed amortization method, a one time opportunity to switch to the required minimum distribution method to determine payment for the year of the switch and all subsequent years without the change in the method being treated as a modification within the meaning of Code section 72(t)(4). Once this switch is made, the required minimum distribution method must be followed in all subsequent years. Any subsequent change will be a modification for purposes of Code section 72(t)(4).

The required minimum distribution method requires that the annual payment for each year is determined by dividing the account balance for that year by the number from the chosen life expectancy table for that year. Under the required minimum distribution method, the account balance, the number from the chosen life expectancy table, and the resulting annual payments are redetermined for each year. When this method is chosen, it is not considered a modification in the series of substantially equal periodic payments, even if the amount of payments change from year to year, provided there is not a change to another method of determining the payments.

In this case, and based on the information submitted, Taxpayer A, subsequent to October 2002 and pursuant to the guidance contained in Rev. Rul. 2002-62, attempted to switch to the required minimum distribution method to determine the payments from IRA X for calendar year 2002 and for all subsequent years. However, by the time Taxpayer A attempted to switch to this method, distributions from IRA X had been made in an amount that exceeded the amount determined under the required minimum distribution method. Further, uncertain as to the effect of stopping distributions from IRA X in October 2002, and to avoid the possible retroactive imposition of the ten percent additional tax on all distributions from IRA X, Taxpayer A, in December 2002, requested that an amount equal to Amount U be distributed to her from IRA X. Thus, the total amount distributed from IRA X in calendar year 2002 was Amount O, which is the amount as originally calculated under the fixed annuitization method. Taxpayer A redeposited Amount V back into IRA X on January 6, 2003, an amount that represents the difference between the annual amount calculated under the fixed annuitization method and the required minimum distribution method. The information presented indicates that Amount W of the amount redeposited (Amount V) into IRA X was outside the requisite 60-day rollover period.

The continuation of fixed payments from IRA X under the fixed annuitization method, based on the facts in this case, would result in the premature depletion of Taxpayer A's IRA X. Deeming the redeposit of Amount V as a rollover under Code section 408(d)(3) would ensure that the stream of payments calculated using the required minimum distribution method would guarantee Taxpayer A retirement income over her life expectancy. 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 V from IRA X and deems Amount V, which was redeposited back into IRA X on January 6, 2003, as a valid rollover contribution within the meaning of Code section 408(d)(3).

This ruling assumes that IRA X meets the requirements of Code section 408(a) at all times relevant to this transaction.

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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions regarding this ruling, please contact ***, SE:T:EP:RA:T2, at ***.

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose Form 437

cc: ***