TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY **200439044**
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

U.I.L. 408.03-00

JUL 9 2004

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SE:T:EP:RA:T2

Legend:

Taxpayer A = *********************

IRA X = *********************

Company L = ***********************

Amount D = ***********************

Individual B = ************************

Company M = ************************

Annuity Contract G = ************************

Dear ************************:

This is in response to your letter dated May 13, 2004, as supplemented by correspondence dated June 30, 2004, July 1, 2004, July 6, 2004 and July 8, 2004, 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 representation have been submitted under penalties of perjury in support of the ruling you requested:

In Taxpayer A reviewed his financial situation and in an effort to preserve assets to provide an income stream to live on for the rest of his life, decided, in addition to other downsizing, to rollover assets invested in IRA X, an individual retirement annuity he maintained with Company L, to a less risky investment vehicle. In order to achieve this objective, Taxpayer A spoke with various investment advisors, including Individual B, a licensed insurance agent employed with Company M, about his options to roll over IRA X on a tax free basis. Taxpayer A asserts that he was informed by Individual B that Taxpayer A could roll over IRA X to a fixed retirement plan insured by an insurance company with no risk of loss. Taxpayer A further asserts that he informed Individual B that he did not want to pay income taxes on IRA X, but wanted to leave the assets in a tax-deferred status for future distributions. Taxpayer A states that Individual B informed him that the transaction he proposed with respect to the investment of IRA X would not result in any current income tax liability. Taxpayer A further states that it was his understanding that IRA X would be rolled over to a qualified plan. Documentation submitted with your ruling request shows that IRA X was liquidated on May 1, On May 7 , Individual B invested IRA X in Annuity Contact G issued by Company M. The annuity data sheet that describes Annuity Contract G indicates that it is "non-qualified" for tax qualification purposes.

In April , Taxpayer A was notified by the Internal Revenue Service that an adjustment in the amount of Amount D was being made to his gross income for tax year because he failed to include, as taxable income, a distribution he received from IRA X. Taxpayer A states that his accountant reviewed the documentation Taxpayer A signed when he established Annuity Contract G and determined that IRA X had been invested in a nonqualified plan and not a qualified plan as Taxpayer A requested. Taxpayer A asserts that the IRA X assets remain invested in Annuity Contract G and that he has not otherwise used such funds since they have been invested in Annuity Contract G.

Based upon the foregoing facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X because failure to waive such requirement would be against equity and good conscience.

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 received 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)(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) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, or 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 submitted in this case demonstrates that a distribution in the amount of Amount D was made to Taxpayer A from IRA X in tax year 2002 as supported by Form 1099-R issued by Company L. Taxpayer A states that he made his intention clear to Individual B prior to withdrawing the assets from IRA X that he wanted to complete a tax-free rollover and that he wanted leave IRA X in a tax-deferred status for future distributions. Documentation submitted by Taxpayer A support the fact that Annuity Contract G is a "non-qualified" annuity for tax qualification purposes. Taxpayer A asserts that he relied on Individual B, a licensed insurance agent with Company M, to rollover IRA X into another tax qualified plan and he failed to do so. Individual B's failure resulted in the failure of Taxpayer A to satisfy the requirement that Amount D be rolled over to an IRA within the 60-day time period. Taxpayer A asserts that the IRA X assets remains invested in Annuity Contract G and no part of the IRA X assets have been withdrawn or otherwise used since they were invested in Annuity Contract G.

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 D from IRA X. Taxpayer A is granted a period of sixty (60) days from the issuance of this ruling letter to contribute Amount D to an IRA. Provided all other requirements, except the 60-day rollover requirement, are met with respect to such contribution, Amount D 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 ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a) (9).

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

This ruling 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 ruling is being sent to your authorized representative pursuant to the provisions of a power of attorney (Form 2848) on file in this office.

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

Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd, Manager
Employee Plans Technical Group2

Enclosures:

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