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

200449037

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 10 2004

SE:T:EP:RA:T1

Uniform Issue List: 408.03-00

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Legend:

Taxpayer	=	******************************** ********************************
Amount D	=	********************
Amount E	=	******************
Custodian F	=	******************************
Bank G	=	**
Entity H	=	***
Custodian M	=	**
Account W	=	*** ***
IRA X	=	*** *************************************
IRA Y	=	*** **

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

This is in response to your letter dated July 22, 2003, as supplemented by additional correspondence and communications dated April 6 and July 6, 2004, 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 by you under penalty of perjury in support of the ruling requested:

The Taxpayer, currently age maintained Individual Retirement Arrangement ("IRA") X with Custodian F, a financial services organization that invests IRA assets in mutual funds. In and of after suffering substantial losses in the equity markets, the Taxpayer withdrew Amount D, consisting of all remaining funds in IRA X.

Within seven days of receipt of Amount D, the Taxpayer contacted Bank G, the agents for Entity H, about a rollover of IRA X funds into another IRA that invested in "demand notes" of Entity H. Entity H accepted Amount D as what the Taxpayer believed was a rollover contribution to a new IRA (with an official of Entity H even asking the Taxpayer who was to be his beneficiary). However, instead of establishing a rollover IRA on the Taxpayer's behalf with his spouse as beneficiary, Entity H established Account W. Account W was not an IRA, and it listed the Taxpayer and his spouse as co-owners rather than listing the spouse as a beneficiary. Entity H established Account W as a non-IRA account without the Taxpayer's knowledge or consent.

In the Taxpayer became concerned about his transactions with Entity H because he had not received Internal Revenue Service ("IRS") Form 5498 from Entity H, confirming that Amount D had, in fact, been rolled over into another IRA . It was at this time that officials of Entity H informed the Taxpayer that "they were not presently established to administer or offer custodial handling of demand note accounts." The Taxpayer protested that Entity H representatives had not previously disclosed this fact to him, and that it had always been his intent to roll Amount D into another IRA. The disclosure by Entity H that Amount D had not been rolled over into another IRA occurred more than 60 days after the Taxpayer had withdrawn those funds from IRA X.

The Taxpayer's IRA assets remained with Entity H until March of 2004, when the Taxpayer withdrew Amount E from Account W and immediately established IRA Y with Custodian M. (Amount E is Amount D less the amount of a "required minimum distribution" withdrawn from Account W by the Taxpayer, as if Account W were an eligible retirement plan subject to the rules of Code section 401(a)(9).)

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E.

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) 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) 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).

Revenue Procedure 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.

In this case the Taxpayer liquidated IRA X and deposited Amount D with Entity H, with the understanding that Account W, established by Entity H, be a rollover IRA. Instead, officials of Entity H placed the money in a non-IRA account. The discovery that Entity H had not rolled Amount D into another IRA occurred more than 60 days after the Taxpayer had liquidated the assets of IRA X. Subsequently, the Taxpayer withdrew Amount E from Entity H and established IRA Y with Custodian M.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount E. Provided all other requirements of section 408(d)(3), except the 60-day requirement, were met with respect to the contribution of Amount E, that amount will be considered a rollover contribution within the meaning of section 408(d)(3).

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.

If you wish to inquire about this ruling, please contact ****************************** the Service by telephone at or by fax 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 ruling letter
- Notice of Intention to Disclose