200327064

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 9 2003

T:EP:RA:T4

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

Taxpayer B =

Individual C =

Amount D=

Amount E=

Amount F =

Amount G =

Company M =

IRA X =

IRA Y =

IRA Z =

Dear

This is in response to the letter dated February 28, 2003, as supplemented by correspondence and communications dated March 10, March 24, March 27, and March 28, 2003, in which you request, through your authorized representative, 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 in support of the ruling requested:

Taxpayer A maintains a number of Individual Retirement Accounts (IRAs). Taxpayer A is married to Taxpayer B.

Taxpayer A and Taxpayer B (collectively "Taxpayers") hired Individual C, who worked for Company M, to manage their investments. In 2002, Individual C misappropriated funds from several of Taxpayers' IRAs. Individual C caused the custodians of Taxpayers' IRA X, IRA Y, and IRA Z to distribute funds from the IRAs. Individual C received the funds for his personal use without Taxpayers' knowledge. The distributions at issue from IRA X occurred between January and August 2002, the distributions from IRA Y occurred in December 2002, and the distributions from IRA Z occurred in January 2002. As shown on Forms 1099-R submitted with this ruling request, the amounts distributed from IRA X, IRA Y, and IRA Z, were Amount D, Amount E, and Amount F, respectively. The total amount distributed was Amount G. The distributions of Amount D, Amount E, and Amount F, were made entirely in cash.

Taxpayers became aware of the misappropriation of funds late in 2002, when they did not receive account statements for IRA X, IRA Y, or IRA Z. After investigating the matter with the custodians of such IRAs, Taxpayers learned that the account statements were being misdirected to another address, which Taxpayers later discovered was the address that Individual C had provided to the custodians in order to conceal his misappropriation of funds.

Taxpayers were unaware of the distributions until after the 60-day rollover period had expired. Taxpayers propose to contribute Amount G to one or more new IRAs.

Taxpayers represent that the distributions of Amount D, Amount E, and Amount F occurred more than 1 year after the date of any other distribution from IRA X, IRA Y, and IRA Z, respectively, that was rolled over into any IRA, and that no other amount was distributed from any other IRA within these 1-year periods and rolled over into IRA X, IRA Y, or IRA Z, respectively.

Based on the above facts and representations, you, through your authorized representative, request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D, Amount E, and Amount F, because the failure to waive such requirement would be against equity or 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 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.

The information presented by Taxpayers demonstrates hardship, and indicates that the Taxpayers could not reasonably satisfy the requirement that Amount D, Amount E, and Amount F be deposited in an IRA within 60 days of the distribution from IRA X, IRA Y, and IRA Z, respectively. The failure to deposit Amount G into one or more IRAs within the 60-day period was beyond the reasonable control of Taxpayers, and the failure to waive the 60-day requirement would be against equity or good conscience.

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, Amount E, and Amount F. Taxpayers are granted a period of 30 days from the issuance of this ruling letter to contribute Amount G, in cash, into one or more IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions 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 taxpayers 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, the original ruling letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact

Please address all correspondence to T:EP:RA:T4.

Sincerely yours,

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans

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