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

200445038

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 13 2004

U.I.L. 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

Company M =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

Bank C =

Account J =

Individual P =

Amount I =

Account K =

Dear

This is in response to your letter dated June 4, 2004, as supplemented by correspondence dated August 4, 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 representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, who is years old, established an individual retirement account, IRA X, with Company M on April 25, , of which Taxpayer B is named as the primary beneficiary. In November, Individual P, Taxpayer A's accountant informed Company M that a required minimum distribution pursuant to Code section 401(a)(9) should be made to Taxpayer A from IRA X for calendar year no later than December 31, using 16.8 as the applicable divisor for the applicable distribution period in determining the required minimum distribution. Individual P has asserted, on Taxpayer A's behalf, that he mistakenly used the distribution factor of 16.8 for Taxpayer A instead of using the correct table that indicates a factor of 17.1

Upon this advice, Company M has stated that it erroneously multiplied the value of IRA X as of November , Amount D, by .168 instead of dividing the value of IRA X by the applicable divisor. This calculation resulted in a distribution from IRA X in the amount of Amount E. Taxpayer A received a check in the amount of Amount E which he deposited into Account J at Bank C on January 2, as supported by account documentation submitted for Account J.

Taxpayer A asserts that these two mistakes caused him to receive an excess distribution from IRA X for year . Taxpayer A has redetermined the correct distribution from IRA X for . Based on an IRA X value of Amount G, as of December 31, 2002, and an applicable divisor of 17.1, based on section 1.401(a)(9)-5, Q&A-4(a)(2)(i) of the Income Tax Regulations issued on April 17, 2002, which regulations taxpayers were required to use for calendar years beginning on or after January 1, the amount required to be distributed to Taxpayer A is Amount H.

Taxpayer A asserts that he relied on Individual P and Company M to correctly determine the amount of his required minimum distribution from IRA X and did not realize, at the time he received the check in the amount of Amount E, that such an amount exceeded his required minimum distribution, Amount H.

Taxpayer A further asserts that he did not learn of the mistake until he was informed of such by Company M at which time more than 60 days had elapsed since the distribution was made from IRA X. On February 20, Taxpayer A, to facilitate the redeposit of the excess distribution to IRA X, withdrew Amount I from Account J and deposited that amount into Account K at Company M.

Based upon the foregoing facts and circumstances, Taxpayer A is requesting that the Service waive the 60-day rollover requirement and allow him to redeposit Amount F, the difference between Amount E and Amount H, back into 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)(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 the time during the 1-year period ending in 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 included 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 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 indicates that Taxpayer A received a distribution in the amount of Amount E from IRA X as supported by Form 1099-R and the account statement for Account J indicating a deposit of such amount on January 2, Further, statements submitted by Individual P and Company M indicate that errors were made by both parties that resulted in Taxpayer A receiving an excess distribution (Amount F) from IRA X for Taxpayer A asserts that he relied on Individual P and Company M to correctly determine the correct distribution from IRA X; that he did not learn of the mistake until informed of such by Company M; and that by the time Company M informed him of the mistake, more than 60 days had elapsed since Amount F was distributed from IRA X. Taxpayer A further asserts that he has not used Amount F since it has been out of IRA X and that Amount F is currently in Account K with Company M.

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 F from IRA X. Taxpayer is granted a period of 60 days from the date of this ruling to contribute Amount F to IRA X. 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 F will be considered rollover contribution within the meaning of section 408(d)(3) of the Code.

Based on the information submitted, Taxpayer has attained his required beginning date. Thus, this ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code. The conclusion reached in this ruling applies only to Amount F, the excess amount which was erroneously calculated and distributed to Taxpayer A from IRA X.

This ruling assumes that IRA X satisfies the qualification requirements of Code section 408 at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto. For example, no opinion is expressed as to the information used by Taxpayer A to determine the required minimum distribution for tax year 2003, the excess distribution, and whether those factors are correct under Code section 401(a)(9).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney (Form 2848) on file in this office.

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

Sincerely yours,

(Signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice 437

cc: