Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 408.03-00

Contact Person: 199901029

Telephone Number:

In Reference to: OP:E:EP:T:4

Date:

OCT 13 1998

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Legend:

Taxpayer	=	**********
Institution A	=	**********
Institution B	=	**********
IRA-1	=	**********
IRA-2	=	*******
Family Trust	=	********** **********
Trust IRA	=	********** ********** ********** **********

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

This is in response to letters dated August 22, 1997, and March 9, 1998, in which your authorized representative requested letter rulings on your behalf concerning the income tax treatment of an individual retirement account ("IRA") under section 408(d) of the Internal Revenue Code (the "Code").

The following facts and representations were made by your authorized representative:

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You established two rollover IRAs with separate financial institutions. IRA-1 was established at Institution A on July 18, 1985, and IRA-2 was established at Institution B on November 9, 1995. IRA-1 and IRA-2 were established with funds transferred from your former employer's qualified retirement plans.

You established the Family Trust, an irrevocable IRA pass-through trust, on March 20, 1996. The purpose of the Family Trust is to receive installment payments, equal to or exceeding the amount required under the minimum distribution rules of section 401(a)(9) of the Code from IRA-1 and IRA-2 and immediately distribute the installments to you.

On March 22, 1996, you met separately with representatives of Institution A and Institution B. You provided each representative with a copy of the Family Trust and requested that the beneficiary designations for IRA-1 and IRA-2 be changed to name the Family Trust as the beneficiary of IRA-1 and IRA-2.

Institution B executed your request to change the beneficiary. As of March 22, 1996, the Family Trust was the named beneficiary of IRA-2.

On March 22, 1996, Institution A changed the name of IRA-1 to Trust IRA. As part of the transaction, you executed a document authorizing Institution A to "journal" your entire IRA-1 account to your Trust IRA account.

On April 26, 1996, you executed a form which documents the transfer from your IRA-1 account to the Trust IRA account. The form indicates that the Trust IRA account was a Trust/Estate account. Institution A treated the transfer as a taxable withdrawal of the entire amount in IRA-1. In 1997, Institution A issued Form 1099-R for 1996 to you reporting a distribution of $213,614.82 from your IRA-1 account.

It is represented that the inclusion of the letters "IRA" in the Trust IRA title led you to believe that the Trust IRA was an IRA in accordance with your intentions. In addition, the reference to the Trust IRA on the authorization document further led you to believe that there was no change in the tax-deferred status of IRA-1.

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You propose to open a new IRA at Institution A in your name, naming the Family Trust as beneficiary of the IRA, then transfer to the new IRA the funds now held at Institution A presently in the name of the Trust IRA, which are comprised entirely of funds from your IRA-1.

Based on the foregoing facts, you request a ruling that in order to restore the status of the IRA on the books of Institution A, you may open a new IRA in your own name, naming the Family Trust as beneficiary of the IRA, then transfer the funds now held at Institution A in the name of the Trust IRA and comprised entirely of funds that came from your IRA-1. Alternatively, you may open a qualifying IRA at another financial institution and transfer funds from the Trust IRA in an otherwise qualifying IRA transfer or rollover.

During the Conference of Right held on February 25, 1998, your authorized representative stated that the Trust IRA was not an IRA described in section 408 of the Code.

Section 408(d)(1) of the Code provides that, in general, any amount paid or distributed out of an individual retirement account shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3)(A)(1) of the Code states, in pertinent part, 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 account is maintained if the entire amount received is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

The Internal Revenue Code and the Income Tax Regulations do not provide for relief from taxation where amounts are withdrawn from an IRA but not rolled over into another IRA or a qualified plan within sixty days. Furthermore, the Internal Revenue Service does not have the authority in the statute or regulations to waive or grant extensions of the statutory sixty day period within which rollovers are permitted. Also, the Service lacks authority to restore funds to an IRA after the statutory time period

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where a taxpayer erroneously relied on the advice of a representative at a financial institution.

With respect to your ruling request, the funds transferred to the Trust IRA according to your instructions on March 22, 1996, which were comprised entirely of funds from IRA-1, cannot be transferred now to another IRA at Institution A under section 408(d)(3) of the Code. Alternatively, you cannot open a qualifying IRA at another financial institution and transfer funds from the Trust IRA into such IRA because the sixty-day period under section 408(d)(3) has expired.

Accordingly, based on the information submitted and representations made, we conclude that the above proposed transactions will not qualify as a tax-free rollover or transfer under section 408(d)(3) of the Code. Further, the funds in the Trust IRA did not qualify as IRA funds under section 408 of the Code after such funds were transferred from your IRA-1 to the Trust IRA.

As your authorized representative agreed at the Conference of Right held on February 25, 1998, the conclusions to this ruling request render your other ruling requests moot. Accordingly, this ruling does not address your other ruling requests.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely,

John G. Riddle, Jr.

John G. Riddle, Jr.
Chief, Employee Plans
Technical Branch 4

Enclosures:
Notice of Intention to Disclose
Deleted Copy of letter