200337014

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T1
2/11/03

Index No.: 408.00-00

Legend:

Individual A.....

Amount B.....

Amount C .....

Company M.....

Company N.....

Plan X.....

IRA Y.....

Dear :

This is in response to a letter dated January 27, 2003, as supplemented by correspondence dated June 11, 2003, from your authorized representative in which you request a ruling under section 408 of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in connection with this request.

Individual A retired in 1996 at age 64 and on June 5, 2001 took a lump sum distribution equal to Amount B from Plan X and within 60 days rolled it over into IRA Y with Company M. Individual A was informed by Company M that the entire amount of the distribution could be rolled over. Subsequent to the date Individual A received his Plan X distribution and prior to the due date of his calendar year 2001 federal Income Tax Return, Individual A received a Form 1099-R issued by Company N which indicated that there were no employee contributions included in the distribution of Amount B. Plan X was a qualified plan under Code section 401(a) and its trust exempt from tax under section 501(c).

Your authorized representative has provided the Internal Revenue Service with information that Individual A provided Company M with all correspondence he had received relating to the Plan X distribution prior to his rolling over said Plan X

distribution into IRA Y. Based on the foregoing facts and representations, Individual A requests a ruling that in accordance with Code section 408(d)(5), the distribution of Amount C from IRA Y will not be includible in Individual A's income for the taxable year in which Amount C is distributed from said IRA X.

Code section 408(d)(1) provides that 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.

Code section 408(d)(5)(A) provides that if the aggregate contributions (other than rollover contributions) paid for any taxable year to an IRA do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) of section 408(d) shall not apply to the distribution of any such contribution to the extent that the contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid if such distribution is received after the date described in section 408(d)(4) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

Code section 408(d)(5)(B) provides that if a taxpayer reasonably relies on information supplied pursuant to subtitle F (relating to procedure and administration) for determining the amount of a rollover contribution, but the information was erroneous, section 408(d)(5)(A) shall be applied by increasing the dollar the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

In this case, Individual A relied upon information which was supplied by Company N pursuant to subtitle F for determining the amount of the distribution from Plan X that could be rolled over to IRA Y. As noted above, this information was provided to Company M. Thus, the dollar limit in Code section 408(d)(5)(A) is increased to Amount C. Accordingly, we conclude that Amount C (exclusive of earnings) is not includible in your gross income in the taxable year in which it is distributed from IRA Y to you.

The above ruling is based on the assumption that IRA Y is an IRA within the meaning of Code section 408 at all relevant times, and that Individual A will take the above distribution from IRA Y as soon as administratively feasible.

This ruling is directed only to the taxpayer who requested. Code section 6110(c) provides that it cannot be used or relied upon as precedent by others.

In accordance with a power of attorney on file with this office, the original of this ruling was sent to your authorized representative.

Should you have any questions or concerns, please contact .

Sincerely yours,

Andrew E. Zuckerman, Manager
Employee Plans Technical Branch 1

cc: