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

201236033

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 13 2012

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

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XXXXXXXXXXXXX
XXXXXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXXXXX
IRA B	=	XXXXXXXXXXXXX XXXXXXXXXXXXX XXXXXXXXXXXXX
IRA C	=	XXXXXXXXXXXXX XXXXXXXXXXXXX
Individual D	=	XXXXXXXXXXXXX
Company E	=	XXXXXXXXXXXXX
Form F	=	XXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXX
Amount 2	=	XXXXXXXXXXXXX
Amount 3	=	XXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

This is in response to your request dated February 3, 2012, 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 ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

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Taxpayer A, age 33, represents that she received a distribution from IRA B totaling Amount 3. Taxpayer A asserts that her failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 408(d)(3) was due to Individual D's misrepresentations and fraudulent activity. Taxpayer A further represents that Amount 3 has not been used for any other purpose.

Taxpayer A represents that she owned IRA B. In February 2010, upon receipt of an offer to purchase income producing property, Taxpayer A opened IRA C with Company E to purchase and manage the property. On February 6, 2010, Taxpayer A completed Form F which established IRA C, designates Company E as the "custodian" of the investment account and states that funds can be transferred to the account as an IRA Rollover. Taxpayer A transferred Amount 1 from IRA B to IRA C on February 22, 2010 and Amount 2 on May 10, 2010.

Taxpayer A intended for these funds to remain in an IRA and she relied on Company E to act as a "custodian" for her investment account. Taxpayer A did not learn of Individual D and Company E's fraudulent misrepresentations until the publication of the outcome of the federal investigation in 2011. Individual D misrepresented Company E as a fiduciary under the Employee Retirement Security Act of 1974, and the fact that Company E was registered as an investment advisor under the Investment Advisor Act of 1940. Consequently, the transfers of funds from IRA B to IRA C were not "direct rollovers" but, instead, taxable distributions under the Code.

Based on the facts and representations, a ruling has been requested that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 3.

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

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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 (January 27, 2003) 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 and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 3 was due to the fraudulent misrepresentations of Individual D and Company E which led to Amount 3 being transferred to a non-IRA account.

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 3 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 into a Rollover IRA. 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 3 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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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 XXXXXXXXXXXXX (Identification No. XXXXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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