TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

SEP 06 2012

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

Spouse B =

IRA X =

Financial
Institution N =

Amount A =

Amount B =

Amount C =

Individual I =

Dear

This is in response to your request dated December 12, 2011, supplemented by additional correspondence dated July 3, 2012, and July 11, 2012, and 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 the ruling requested.

Taxpayer A represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error committed by Financial Institution N.

On October 20, 2008, Taxpayer A, age 87, opened IRA X at Financial Institution N. Taxpayer A named Spouse B, age 61, as the primary beneficiary of IRA X. Financial Institution N failed to record that Spouse B was more than 10 years younger than Taxpayer A. On September 9, 2010, Taxpayer A was notified that his 2010 Required Minimum Distribution ("RMD") was Amount A, and directed that Amount A be deposited into his personal checking account.

On April 11, 2011, Taxpayer A was notified by Individual I, the Vice President of Financial Institution N, that his 2010 RMD had been calculated incorrectly using the Uniform Lifetime Table, rather than the Joint and Last Survivor Table. This error occurred as a result of Financial Institution N's failure to record Spouse B's age. Taxpayer A's correct 2010 RMD was Amount B, resulting in an excess distribution of Amount C. When Taxpayer A requested that Amount C be returned to IRA X, he was informed that the error was discovered after the 60-day rollover period had expired.

Taxpayer A has not used Amount C for any other purpose. Individual I has submitted an affidavit dated July 10, 2012, assuming responsibility for the error that resulted in the incorrect calculation of the 2010 RMD.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the excess distribution of Amount C.

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 60^{th} 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 his assertion that he received an excess distribution of Amount C from IRA X, because of an error committed by Financial Institution N in incorrectly calculating Taxpayer's 2010 RMD using the Uniform Lifetime Table instead of the Joint and Last Survivor Table.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the excess distribution of Amount C from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C to a rollover IRA account. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount C will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of any amounts that are required to be distributed by section 401(a)(9) 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 taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with Form 2848 on file in this office.

If you wish to inquire about this ruling, please contact at . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

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

cc: