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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 0 4 2012

T:EP:RA:T2

Uniform Issue List: 408.03-00

Legend:

Taxpayer	=	***************
IRA X	=	*** ******************************
Financial Institution A	=	***
Financial Advisor B	=	*************************
Amount A	=	***************
Amount B	=	***************

Dear ************

    This is in response to your request dated May 3, 2012, 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 penalty of perjury in support of the ruling requested:

    Taxpayer represents that she received a distribution from IRA X totaling Amount A. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error made by Financial Institution A; Taxpayer further represents that while a small portion of Amount A was used, Amount B has not been used for any other purpose.

    The property settlement agreement pursuant to a decree of divorce from Taxpayer's former spouse granted her ownership and possession of IRA X, which previously belonged to her former spouse. To transfer ownership of the account, the

court issued a qualified domestic relations order (which Taxpayer represented meets the criteria of section 414(p) of the Code) assigning to the Taxpayer the interest in the account. Taxpayer's attorney then issued a letter of instruction to Financial Institution A for an internal transfer to Taxpayer. The letter included language indicating that the Taxpayer intended the transfer to be treated as a rollover. Financial Institution A then mailed a check to Taxpayer, and treated it as a taxable distribution. This was contrary to the direction of Taxpayer. Taxpayer subsequently received a check for Amount A.

Taxpayer then consulted Financial Advisor B. Taxpayer presented Financial Advisor B with the divorce decree and other documents, none of which indicated that Taxpayer had already received a distribution from IRA X, thus Financial Advisor B was unaware that Taxpayer had received a distribution from IRA X, thus she did not advise her to roll over the distribution into an IRA. Taxpayer did not realize that the check she had received represented the funds from IRA X until after the 60-day rollover period. By the time Taxpayer realized that the funds she received were from IRA X, she had spent a portion of the funds, leaving Amount B available for rollover.

Based on the facts and representations, you request a ruling 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 B.

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 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.

Section 408(d)(6) of the Code states that the transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

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 is consistent with her assertion that her failure to accomplish a timely rollover was caused by the error of Financial Institution A. The documentation provided by Taxpayer demonstrated Taxpayer's intent to roll over her interest in IRA X to another IRA, and her instructions to Financial Institution A to accomplish this rollover. Financial Institution A did not carry out Taxpayer's instructions, resulting in Taxpayer's interest in IRA X being transferred to a nonqualified 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 B from IRA X. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B 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 B 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 amounts that are required to be distributed by section 401(a)(9) 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 ***** ********* (ID ***-******) at (****) ****-*****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

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