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

201314057

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 11 2013

UIL:408.03.00

T:EP:RA:T3

Legend:

Taxpayer A =

Individual B =

Individual C =

IRA X =

IRA Y =

IRA Z =

Amount A =

Amount B =

Amount C =

Amount D =

Amount E =

Amount F =

Financial Institution A =

Financial Institution B =

Financial Institution C =

Dear ,

This is in response to your request dated October 11, 2012, in which your authorized representatives, on your behalf, requested 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 A represents that she received distributions from Financial Institution A of Amount A and Amount B. Taxpayer A asserts that her failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) was due to an error made by Individual C, an employee of Financial Institution B. Taxpayer A further represents that the amount distributed has not been used for any other purpose.

Taxpayer A maintained two Individual Retirement Accounts, IRA X and IRA Y (a rollover IRA) with Financial Institution A. She also maintained other non-qualified accounts at Financial Institution A. Taxpayer A, an elderly, retired, woman, has always been dyslexic. As such she typically relies on others to describe the contents of documents to her. Over the years Taxpayer A developed a relationship with Individual B, an employee of Financial Institution A. He was her primary contact with Financial Institution A.

In May 20 , Individual B left Financial Institution A to go into business with Individual C who worked as a registered representative with Financial Institution B. Upon doing so, Individual B requested that Taxpayer A move her assets at Financial Institution A, including IRA X and IRA Y, to Financial Institution B. At a meeting with Individual B and Individual C in early May 20 , Taxpayer A agreed to do this. She then signed opening documents for two accounts; IRA Z, and a brokerage account. The contents of the opening documents were explained to Taxpayer A by Individual B and Individual C as she had difficulty comprehending them because of her dyslexia.

By letter to Taxpayer A, dated May , 20 , Financial Institution B acknowledged the opening of IRA Z and thanked Taxpayer A for establishing the account. On June , 20 Taxpayer A and Individual C signed documents for Financial Institution B updating information for IRA Z and designating two beneficiaries.

On May , 20 , upon Individual C's instruction, Taxpayer A submitted withdrawal slips to Financial Institution A, directing that IRA X and IRA Y be closed and the proceeds deposited to the checking account she maintained at Financial Institution A. On June , 20 , Amount A and Amount B, the balances in IRA X and IRA Y, were deposited to her checking account. Individual C also instructed Taxpayer A to liquidate a bond fund which she maintained and have these funds deposited to the checking account at Financial Institution A. These funds were deposited on June , 20 . On June , 20 Taxpayer A drew a check for Amount C which was deposited to the brokerage account at Financial Institution B. Amount C was in excess of the combined balances of IRA X and IRA Y. Individual C should then have transferred to IRA Z, Amount D, an amount equal to Amount A and Amount B, less Amount E, Taxpayer A's required minimum distribution for 20 . Individual C did not do so; rather two CDs were purchased for the brokerage account and the remaining cash was also kept in the brokerage account.

In November 20 , Individual C ceased working with Financial Institution B and became affiliated with Financial Institution C. At the direction of Individual C, Taxpayer signed documents to close her accounts at Financial Institution B and to transfer the assets to Financial Institution C. The two CD's and cash were transferred to Financial Institution C.

Given taxpayer's dyslexia, and her relationship with Individual B and Individual C, she relied on them to monitor and describe the contents of her various financial accounts. Because of this reliance it was not until she saw her accountant in February 20 that she realized that her IRA accounts had not been properly rolled over.

Taxpayer A then contacted Individual C in an attempt to remedy the situation. Individual C told her to sell her two CDs and transfer back to her checking account at Financial Institution A, Amount F, an amount, calculated by him, representing the amounts distributed from IRA X and IRA Y, less the required minimum distribution for 20 . This amount differed from Amount D by a couple of hundred dollars. On March 9, 2012 Taxpayer A instructed Financial Institution C to sell the two CDs and on March , 20 deposited to her checking account at Financial Institution A, Amount F.

Individual C then informed Taxpayer A that he would not provide her with a letter explaining his error unless she gave him Amount F to invest. No longer trusting Individual C, and having continued to maintain her brokerage account at Financial Institution B, Taxpayer A requested Financial Institution B to assign a new account representative to her.

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.

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 was caused by an error on the part of Individual B and Individual C in their capacity as employees of Financial Institution B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service thereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X and Amount B from IRA Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D 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 D 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

No opinion is expressed as to the tax treatment of the transaction described therein 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 A 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 has been sent toy your authorized representatives in accordance with a power of attorney on file with this office.

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

Sincerely yours,

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

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

cc: