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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 09 2013

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXX

IRA B = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX

Financial Institution C = XXXXXXXXXXXXXXXX

IRA D = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX

Financial Institution E = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Amount 1 = XXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your request dated July 13, 2012, as supplemented by correspondence dated October 23, 2012 and March 28, 2013, from 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 penalty of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution totaling Amount 1 from IRA B maintained by Financial Institution C. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Financial Institution B in failing to deposit Amount 1 into a rollover IRA account. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that she had an IRA account held in two Certificates of Deposit ("CDs") held in an IRA account at Financial Institution C.

Upon maturity of the CDs, on October : , 20 , Taxpayer A met with a Financial Institution C representative to discuss alternative investment options, but intended to keep the amounts in an IRA. Taxpayer A represents the representative mishandled the transaction by preparing documents transferring the IRA monies to a taxable joint account and, because the representative had another appointment, rushing Taxpayer A to sign the transfer forms without allowing adequate time for Taxpayer A to read and understand the documents prepared by the Financial Institution C representative. Taxpayer A states that it was never her intention to close out IRA B, only to change investments. Instead of depositing the funds into an IRA, the Financial Institution C representative completed a transfer of Amount 1 into a non-IRA account. The information and documentation submitted supports Taxpayer A's assertion that Financial Institution C made a mistake in failing to deposit Amount 1 in a rollover IRA account. Taxpayer A discovered the error, in 2012, when she received a 1099-R indicating the taxable distribution. On the advice of her accountant, on April , 20 , Taxpayer A completed a rollover of Amount 1 into IRA D with Financial Institution E.

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 1 from IRA 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 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 60^{th} 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 are consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was caused by a mistake by Financial Institution C. 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 1 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met, the contribution of Amount 1 to IRA D on April 4, 2012, 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 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 XXXXXXX (I.D. XXXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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