TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201338058

JUN 27 2013

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

Individual J =

Account K =

Account L =

Account M =

Dear :

This is in response to your request for a ruling dated March 20, 2013, as supplemented by correspondence dated April 1, 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 from IRA B totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover of Amount F within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by an employee of Financial Institution C.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. On March 27, 20 , Taxpayer A visited Financial Institution C to secure a loan of Amount E to be used for a home improvement project. Taxpayer A asked Individual J, an employee of Financial Institution C, whether IRA B could be used as collateral for the loan. Individual J recommended that because IRA B had reached maturity, it could be closed and the proceeds used to open two savings accounts (Accounts K and L) with Financial Institution C and one checking account (Account M) with Financial Institution C. From Amount D in IRA B, Amount F was deposited into Account K, Amount G was deposited into Account L and Amount H was deposited into Account M. All three deposits totaling the amount of IRA B (Amount D) were made by electronic tranfers. Amount G was specifically designated as collateral for Taxpayer A's personal loan of Amount E.

Before the above transactions were executed, Individual J instructed Taxpayer A that Amount G, the collateral for her loan, would have to remain in Account L until her loan (Amount E) was paid off. Taxpayer A agreed and then stated to Individual J that she wanted Amount F to remain in a retirement account. Individual J completed the deposit slip that was used to transfer Amount F into Account K. However, Account K was a non-IRA account. Neither Amounts F nor G have been used for any purpose subsequent to their transfer to Accounts K and L, respectively.

In late January, 20 , Taxpayer A received a Form 1099-R reporting a taxable distribution of Amount D from IRA B. Taxpayer A immediately contacted Individual J who acknowledged he had provided misleading advice to Taxpayer A. The ruling request is accompanied by a letter prepared by Individual J in which he admits his actions caused Amount F to be deposited in a non-IRA account in error, when Taxpayer A had intended that Amount F be rolled over into an IRA account.

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 distribution of Amount F.

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 of Amount F was due to the mistake made by an employee of 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 F from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute an amount not to exceed Amount F 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, the contribution 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 408(a)(6) 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 ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact
(I.D. #), , at ( ) - .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: