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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201345038

AUG 15 2013

T:EP:RA:T2

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A	=	* * *
IRA X	=	* * *
Financial Institution A	=	* * *
Financial Institution B	=	* * *
Employee	=	* * *
Amount 1	=	* * *

Dear * * *:

This responds to your December 7, 2012, request, as supplemented by correspondence dated March 25, 2013, for a waiver of the 60-day rollover requirement of 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 she received a distribution from IRA X totaling Amount 1. Taxpayer A 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 an employee of Financial Institution A. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Prior to engaging in the transactions described below, Taxpayer A maintained IRA X at Financial Institution B. In 2007, Taxpayer A's husband had spoken with Employee, the chief investment officer of Financial Institution A and a Chartered Financial Analyst, who informed Taxpayer A's husband that he could transfer his retirement funds to an IRA at Financial Institution A and that Financial Institution A could act as custodian of the IRA. Employee was mistaken—Financial Institution A was not qualified to serve as an IRA custodian. Financial Institution A submitted documentation admitting its error. Taxpayer A's husband transferred his retirement funds to Financial Institution A in 2007.

Relying on the representations made to her husband and believing that he had successfully transferred his retirement assets, on July 30, 2008, Taxpayer A received a distribution of Amount 1 from IRA X and on August 4, 2008, she deposited Amount 1 with Financial Institution A. No federal taxes were withheld. The documents issued in connection with Taxpayer A's transfer indicated that the funds were intended to be held in an IRA at Financial Institution A.

In 2010, IRS audited Taxpayer A on an unrelated issue. During the course of the audit, the IRS examiner discovered that Financial Institution A was not qualified to serve as IRA custodian. Taxpayer A's accountant did not uncover the mistake prior to the audit. Taxpayer A's funds continue to remain invested in Financial Institution A. She has not withdrawn or spent any of the distributed funds.

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.

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.

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) 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) (related to required minimum distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

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) 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.

Revenue Procedure 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) of the Code, 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 the failure to accomplish a timely rollover was caused by an error made by an employee of Financial Institution A.

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 X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3).

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.

Pursuant to the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact * * * * * * * * * * * at * * *-* * *-* * * *. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Jason Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: * * *
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cc: * * *
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