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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 11 2013

Uniform Issue List: 408.03-00

T:EP:RA:T2

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Legend:

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

Dear * * *:

This responds to your October 10, 2012, request, as supplemented by correspondence dated April 5, 2013, April 29, 2013, May 22, 2013, August 10, 2013, and August 14, 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 represents that she received a distribution from IRA X totaling Amount A. Taxpayer asserts that her failure to accomplish a rollover of Amount B, which was a portion of Amount A, within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer's mistake made during a timely attempted rollover followed by Financial Institution's failure to notify Taxpayer of her mistake prior to the expiration of the 60-day period.

Taxpayer received a distribution of Amount A from IRA X on August 25, 2011. On October 24, 2011, the 60th day after the distribution, Taxpayer attempted to wire Amount B back into IRA X. For a few days, the money appeared in both IRA X and the account from which she was sending the funds. Taxpayer called the Financial Institution twice and was told that their system showed that Amount B was in IRA X.

On October 28, 2011, after the 60-day period, Financial Institution notified Taxpayer that the October 24, 2011, wire transfer of Amount B had failed. Taxpayer had left out a digit in her account number for IRA X. Taxpayer A subsequently deposited Amount B into IRA X on October 31, 2011.

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.

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) of the Code and incidental death benefit requirements of section 401(a) of the Code).

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 are consistent with her assertion that the failure to accomplish a timely rollover was caused by Taxpayer's mistake made during a timely attempted rollover followed by Financial Institution's failure to notify Taxpayer of her mistake prior to the expiration of the 60-day period. Further, Taxpayer's clear intent was to move Amount B back into IRA X within the 60-day period.

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. Provided all other requirements of section 408(d)(3), except the 60-day requirement, were met with respect to such contribution, the contribution of Amount B on October 31, 2011 will be considered a valid 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 (regarding required distributions).

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 * * * * * * * * * * * * * * * 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