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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201420024

FEB 19 2014

U.I.L. 408.03-00

SE:T:EP:RA:T3

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Legend:

Taxpayer A = xxxxxxxxxxxxxxxxxxx

Individual B = xxxxxxxxxxxxxxxxxxx

Individual M = xxxxxxxxxxxxxxxxxxx

SEP-IRA X = xxxxxxxxxxxxxxxxxxx

Company C = xxxxxxxxxxxxxxxxxx

Bank D = xxxxxxxxxxxxxxxxxx

Amount E = xxxxxxxxxxxxxxxxxx

Dear xxxxxxxxxxxx:

This letter is in response to your request dated February 18, 2013, as supplemented by correspondence dated August 15, 2013, submitted on your behalf, by 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

On March 31, 2011, Taxpayer A received from her deceased husband's SEP-IRA X a distribution totaling Amount E. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made of her financial advisor, Individual M of Bank D. Taxpayer A represents that Amount E has not been used for any other purpose and remains in a non-IRA account with Bank D.

Taxpayer A represents that her deceased husband, Individual B, maintained SEP-IRA X with Company C. SEP-IRA was invested in two annuity funds. Individual B made all decisions related to his various retirement accounts and worked with his financial advisor, Individual M of Bank D. Taxpayer A is the sole beneficiary of SEP-IRA X. Taxpayer A is elderly and following the death of her husband, relied on the advice and guidance of Individual M.

In February, 2011, Taxpayer A asked her daughter to contact Individual M to sell the annuity accounts in SEP-IRA X and transfer the proceeds directly to an eligible retirement account. At that time, Individual M advised Taxpayer A that to transfer the funds, an IRA account would need to be set up for her and that he would handle getting her the necessary forms to facilitate the transfer of the proceeds of the annuity accounts into an IRA. Upon receipt of the forms, Taxpayer A completed the forms as instructed by Individual M and delivered the forms to Individual M so that Individual M could roll over the proceeds from the annuity accounts that were liquidated on March 31, 2011, into a rollover IRA.

However, in December, 2012, when Taxpayer A's son was preparing Taxpayer A's tax return for the year 2011, in reviewing Form 1099-R, it was discovered that the proceeds of the annuity accounts were not rolled into a rollover IRA as Taxpayer A intended.

Documentation indicates that Individual M failed to follow appropriate procedures in transferring the funds into a rollover IRA and transferred Amount E into a non-IRA account with Bank D.

Based on the foregoing facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount E.

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 received 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 included 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, 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, or 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 committed by Individual M of Bank D.

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 E from SEP-IRA X. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount E into a rollover IRA. Provided all other requirements of Code section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount E 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 transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

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 have any questions concerning this ruling, please contact xxxxxxxxxxxxxxx xxxxxxxxxxxxxxx, SE:T:EP:RA:T3,at xxxxxxxxxxxxxxxxxx.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

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

cc: xxxxxxxxxxxxxxxxxx