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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201423040

MAR 12 2014

Uniform Issue List: 408.03-00

T:EP:RA:T2

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Legend:

Taxpayer = ***

IRA X = ***
***

Annuity = ***
***
***

Amount = ***

Insurance Agent = ***

Financial Institution A = ***

Financial Institution B = ***

Dear ***,

This is in response to your request dated May 10, 2012, as supplemented by correspondence dated October 29, 2012, 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 represents that she requested a distribution from IRA X totaling Amount. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error committed by Insurance Agent when submitting an annuity application to Financial Institution B, which led to

Amount being placed in Annuity, a non-qualified annuity with Financial Institution B. Taxpayer further represents that Amount has not been used for any other purpose.

Taxpayer represents that she withdrew Amount from IRA X, on March 10, 2009,with the intent to rollover Amount from IRA X to a Rollover IRA at Financial Institution B in order to obtain better financial terms. Taxpayer consulted with Insurance Agent regarding taking a lump sum distribution of Amount from IRA X instead of a direct transfer of Amount from IRA X to a Rollover IRA at Financial Institution B in an effort to expedite the rollover process and obtain the most favorable financial terms.

Taxpayer represents that she relied on Insurance Agent for many years regarding similar transactions. During the time that Taxpayer signed the distribution form to request a lump sum distribution of Amount from IRA X, she pre-signed and partially completed Financial Institution B's annuity application form to request a Rollover IRA at Financial Institution B. She requested that Insurance Agent complete the remaining substantive sections of Financial Institution B's annuity application form. Taxpayer represents that Insurance Agent inadvertently marked the incorrect plan specifications on Financial Institution B's annuity application form. Specifically, Insurance Agent marked non-qualified-cash versus qualified-rollover.

When Taxpayer received Amount from IRA X in the form of a lump sum distribution check from Financial Institution A, Insurance Agent sent the distribution check via expedited mail to Financial Institution B. Amount from IRA X was received by Financial Institution B within 60 days of the initial lump sum distribution from IRA X. Financial Institution B placed Amount in a non-qualified annuity per the Financial Institution B's annuity application form. Taxpayer and Insurance Agent failed to recognize that the annuity contract type was labeled non-qualified when a copy of the contract was received by Taxpayer and subsequently when annual annuity contract statements were received by Taxpayer.

Taxpayer became aware of the error committed by Insurance Agent, in April 2011.Taxpayer immediately notified Financial Institution B of the error and awaited a correction of the error by Financial Institution B. Financial Institution B later informed Taxpayer that they were unable to make a correction without a ruling from the Service. Taxpayer also received a notice from the Service regarding a required adjustment to her Federal Individual Income Tax Return for Amount from IRA X where Amount was represented as a rollover contribution.

Taxpayer asserts that it was always her intention to rollover Amount to another IRA. Taxpayer states that her intention to rollover Amount to another IRA is indicated by her representations, with supporting documentation, that: (1) in the preceding year she included Annuity, believing it to be in an IRA, in her 2010 required minimum distribution calculation; (2) she included Annuity in her 2009 Federal Individual Income Tax Return as a rollover contribution; and (3) she has not used Amount for any other purpose during the relevant time period. 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.

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.

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, including a statement by Insurance Agent admitting his error, are consistent with her assertion that her failure to accomplish a timely rollover was caused by an error committed by Insurance Agent.

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 from IRA X. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 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, Amount 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 *** (ID # ***) at ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Jason E. Levine, Manager
Employee Plans Technical Group 2

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