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

201436056

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

JUN 10 2014

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

IRA X =

Amount C =

Amount D =

Company F =

Dear :

This is in response to your request dated October 21, 2013, submitted 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:

Taxpayer A represents that she received a distribution from IRA X totaling Amount C. Taxpayer A asserts that her failure to accomplish a rollover of a portion of amount C within the 60-day period prescribed by section 408(d)(3) of the Code was caused by her anticipated need of funds to help prevent a potential loss of her home and the lack of guidance from Company F.

Taxpayer A has IRA X with Company F. IRA X is an individual retirement account which receives contributions from a SIMPLE IRA Plan. Due to adverse economic conditions, Taxpayer A was faced with the potential loss of her home. While pursuing a modification of her mortgage, Taxpayer A prepared for an anticipated cash demand by withdrawing Amount C from IRA X.

Taxpayer A represents that she intended to return any withdrawn funds that were not needed to save her home from potential foreclosure to an IRA. After the mortgage modification was completed, which was after the expiration of the 60-day rollover period, Taxpayer A redeposited a portion of the amount withdrawn from IRA X (Amount D) into IRA X. The representative of Company F erroneously placed Amount D back into IRA X even though the 60 day rollover period had expired and Amount D is considerably more than may be contributed to a SIMPLE IRA Plan for the 2011 plan year.

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 rollover of Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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) of the Code do not apply to any amount required to be distributed under section 408(a)(6) 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) 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) 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 fails to establish that the failure to accomplish a timely rollover was caused by mistakes made by Company F. Taxpayer A withdrew Amount C with the intent to use such amount to accomplish a modification of the mortgage, and made no attempt to rollover such amount until after such modification was completed. Company F's failure to provide guidance regarding what constitutes a timely rollover and Company F's error in accepting the contribution of Amount D after the expiration of the 60-day rollover period is not the type of financial institution error which allows us to waive the 60 day requirement. Therefore pursuant to section 408(d)(3)(I) of the Code, the Service will not waive the 60-day rollover requirement with respect to the rollover of Amount D to IRA X.

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 (ID) at ( ) - . Please address all correspondence to SE:T:EP:RA:T3 .

Sincerely yours,

Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

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

cc: