201301019

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 12 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

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XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Legend:

Taxpayer A	= XXXXXXXXXXXXXX
IRA B	= XXXXXXXXXXXXXX XXXXXXXXXXXXXX XXXXXXXXXXXXXX
IRA C	= XXXXXXXXXXXXXX XXXXXXXXXXXXXX
Bank D	= XXXXXXXXXXXXXX
Financial Institution E	= XXXXXXXXXXXXXX
Account F	= XXXXXXXXXXXXXX XXXXXXXXXXXXXX
Account G	= XXXXXXXXXXXXXX XXXXXXXXXXXXXX
Amount 1	= XXXXXXXXXXXXXX
Amount 2	= XXXXXXXXXXXXXX
Amount 3	= XXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXX:

This letter is in response to your request dated February 1, 2011, as supplemented by correspondence dated March 10, 2012 and March 27, 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 A represents that he received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to his reliance on misinformation received from the representative of Bank D. Taxpayer A also represents that Amount 1 has not been used for any other purpose and remains in a non IRA account.

Taxpayer A represents that he owned IRA B, which was maintained by Bank D. IRA B was invested in Certificates of Deposits which matured on October 13, 20 . On October 18, 20 , Taxpayer A met with a representative of Bank D for instructions on how to complete a direct rollover to an IRA with Bank D that provided for a greater rate of return. Based on the information received from the representative of Bank D, Taxpayer A opened a new account, Account F, with Bank D on October 18, 20 , intending it to be an IRA. However, the information received from the representative of Bank D was incorrect in that the account created, Account F, while providing for a higher rate of return, was a non-IRA account. Taxpayer A transferred Amount 1 from IRA B to Account F at that time intending it to be a direct rollover. On December 20, 20 , still believing Account F was an IRA, Taxpayer A transferred Amount 2, a portion of Amount 1, from Account F to an IRA he maintained at Financial Institution E, IRA C. In January, 20 upon receipt of a Form 1099 from Account F, Taxpayer A became aware that Account F was a non-IRA account. On January 26, 20 , after consultations with his CPA, Taxpayer A transferred Amount 3 (Amount 1 minus Amount 2) from Account F to IRA C. Documentation submitted includes a letter from Bank D acknowledging that there was a miscommunication regarding Taxpayer A's intention and desired disposition of IRA B after maturity in October, 20 .

Based on the facts and representations, a ruling has been requested 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. Amount 1 has not been used and remains in IRA C.

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 A is consistent with his assertion that his failure to accomplish timely rollover was due his reliance on the misinformation received from a representative of Bank D, which resulted in Amount 1 being deposited into Account F, a non-IRA account.

Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to the contribution of Amount 2 on December 20, 20 , and Amount 3 on January 26, 20 , such contributions will be considered valid rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of any 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 XXXXXXXXXXX (ID XXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton Watkins

Carlton Watkins, Manager
Employee Plans Technical Group 1

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