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

201616013

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 20 2016

SE:T:EP:RA:T2

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A	=	* * *
Plan B	=	* * * * * *
IRA C	=	* * * * * *
Amount D	=	* * *
Amount E	=	* * *
Financial Institution F	=	* * *
Financial Advisor G	=	* * * * * *
IRA X	=	* * * * * * * * * * * * * * *

Dear * * *:

This is in response to your request, dated December 23, 2014, as supplemented by correspondence dated December 14, 2015, in which your authorized representative, on your behalf, requested a waiver of the 60-day requirements contained in section 402(c)(3) and 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 on August 17, 2010, a direct rollover, of Amount D, from Plan B, was deposited into IRA X. On October 29, 2010, a direct rollover of Amount E, from IRA C, was deposited into IRA X. Taxpayer A asserts that her intent was to roll over Amounts D and E into a traditional IRA and that her failure to accomplish the rollover into the correct IRA within the 60-day period prescribed by section 402(c)(3) and section 408(d)(3) of the Code was due to an administrative error made by Financial Institution F. Taxpayer A further asserts that Amount D and Amount E have not been used for any other purpose.

Taxpayer A requested that Financial Institution F transfer assets from Plan B and IRA C into a Traditional IRA to be established in her name. Taxpayer has provided a letter from Financial Advisor G verifying Financial Institution F's mistake.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code and section 408(d)(3) of the Code with respect to the distribution of Amount D from Plan B and Amount E from IRA C.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) 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 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

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 408(d) do not apply to any amount required to be distributed under section 401(a)(9).

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.

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 402(c)(3)(B) or 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 and documentation provided by Taxpayer A is consistent with her assertion that the failure to accomplish a rollover of Amount D and Amount E into a Traditional IRA in Taxpayer A's name within the 60-day period prescribed by section 402(c)(3)(A) and section 408(d)(3)(A) of the Code was due to an administrative error made by Financial Institution F.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Plan B. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA or another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the amount transferred (up to Amount D) will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

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 IRA C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E, into a Rollover IRA or another qualified plan. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the amount transferred (up to Amount E) will be considered a 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.

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 a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact * * * (I.D. no. * * *) at * * *. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Sherri M. Edelman, Manager,
Employee Plans Technical Group 2

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

cc: * * *
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