TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 12 2013

201340024

Uniform Issue List: 408.03-00

T:EP:RA:T3

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Legend:

Taxpayer A = *****************

Company B = *****************************

Financial Advisor C = ***************

Company D = *************

IRA X = ***
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IRA Y = ***
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Amount 1 = **********

Amount 2 = **********

Dear **************:

This is in response to your request dated September 18, 2012, as supplemented by correspondence dated December 28, 2012, 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:

Taxpayer A represents that she received a required minimum distribution for 20   from IRA X of Amount 1 on June 14, 20 . Taxpayer A further represents that on December 11, 20 , she received a second required minimum distribution from IRA Y of Amount 2. Taxpayer A asserts that an excess required minimum distribution of Amount 1 was made from IRA Y due to an error by Financial Advisor C.

Taxpayer A was the beneficiary of her deceased spouse's two individual retirement accounts ("IRAs") and his account in a profit-sharing plan. One of the IRAs was held with Company B as the custodian. Following the death of Taxpyer A's spouse on March 16, 20 , Taxpayer A's interests in her spouse's IRAs and the profit-sharing account were each rolled into IRA X on May 19, 20 . These rollovers were accomplished by trustee-to-trustee transfers.

On June 14, 20 , a required minimum distribution was made from IRA X of Amount 1, which equaled the amount of the required minimum distribution due for 20   with respect to the amounts transferred from her spouse's IRA with Company B. The distribution was not made by issuance of a check to Taxpayer A, but was transferred (minus tax withholding) directly to a non-IRA account at Company B.

Taxpayer A's accounts at Company B (and those of her deceased spouse) were handled by a registered investment advisor, Financial Advisor C. In September 20 , Financial Advisor C moved his practice to Company D. In November 20 , Taxpayer A transferred the assets in IRA X to a new IRA Y at Company D. The rollover was made through a trustee to trustee transfer.

In December 20 , Taxpayer A's counsel contacted Financial Advisor C to ensure that the required minimum distribution from IRA X for 20   had been made (since Taxpayer A did not recall receiving a distribution). Financial Advisor C checked the records of Company D, and determined that no required minimum distribution had been made from IRA Y. At that time, Financial Advisor C no longer had access to Company B's records, which would have shown that Amount 1 had already been distributed from IRA X in June 20 , before the rollover was made to IRA Y.

Under the erroneous assumption that no distribution had yet been made from IRA X for 20 , Financial Advisor C had Company D make a required minimum distribution on December 16, 20   from IRA Y. The distribution equaled Amount 2, the total minimum required distribution for 20   with respect to the amounts rolled into IRA X from all three of her spouse's accounts. The distribution thus exceeded the amount required under the required minimum distribution rules by Amount 1, the amount of the June 20   distribution from IRA X.

Taxpayer A did not learn of the duplicative distributions until after she received 1099-Rs from both Company B and Company D in 20 .

Based on these 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 1 from IRA Y on December 16, 20 .

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 60^{th} 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 60^{th} 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 her assertion that an excess required minimum distribution of Amount 1 was made from IRA Y due to an error by Financial Advisor C.

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 1 from IRA Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into IRA Y or into another 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, the contribution of Amount 1 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.

Pursuant to a 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: *****************
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