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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 20 2013

Uniform Issue List: 408.03-00

T: EP: RA: T3

Legend:

Taxpayer A =

SEP-IRA X =

Company F =

Amount M =

Bank P =

Amount N =

Dear

This is in response to a letter dated September 4, 2012, supplemented by a letter dated July 23, 2013, 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 (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 of Amount M from SEP-IRA X. Taxpayer A asserts that his failure to complete a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Bank P to timely transfer the funds as requested by Taxpayer A.

Taxpayer A's need for a distribution from SEP-IRA X was precipitated by a divorce. Taxpayer A's spouse was to keep the family home and Taxpayer A was to receive his share of equity in their home. Taxpayer A wished to purchase a nearby house, but was unable to qualify for standard financing due to the existing mortgage on the marital home. Therefore, Taxpayer A withdrew Amount M from SEP-IRA X for the purpose of purchasing the new home jointly with his father. Taxpayer A used Amount M as part of a cash purchase, with the intent of obtaining a home equity line of credit from Bank P to effect a rollover back to SEP-IRA X. On May 11, 2011, a wire transfer of Amount M from SEP-IRA X was transferred to Taxpayer A's checking account. On May 13, 2011, Taxpayer A closed on the new home, and he initiated the application for the home equity line of credit three days later. However, completion of the transaction required removing Taxpayer A's name from the mortgage on his former home. Taxpayer A's former spouse was not able to close on her refinancing until June 23, 2011, at which time Taxpayer A made renewed efforts to complete the home equity loan, which required the participation of his father. Unfortunately Taxpayer A's father became severely ill and was unable to attend the closing on the home equity loan in person.

Taxpayer A's father had an attorney prepare a power of attorney in order to have Taxpayer A close the transaction on his behalf. The power of attorney was faxed to Bank P and the transaction closed on July 6, 2011. However, Bank P required an original of the power of attorney before disbursing funds from the equity line of credit. Taxpayer A provided the original power of attorney to Bank P, but Bank P did not release the funds until July 11, 2011. On that same day Taxpayer A mailed Company F the check for Amount N. Company F did not redeposit Amount M into SEP-IRA X until July 15, 2011.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to the distribution of Amount M from SEP-IRA X.

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 a timely rollover of Amount M was due to Bank P's failure to timely transfer the funds as requested by Taxpayer A.

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 M from SEP-IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement were met with respect to the rollover contribution of Amount M to SEP-IRA X on July 15, 2011, will be considered a rollover contribution within the meaning of section 408(d)(3) 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.

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 have any questions, please contact

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