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

201611024

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 16 2015

Uniform Issue List: 408.03-00

T:EP:RA:T2

Legend:

Taxpayer A =

IRA X =

Financial Advisor A =

Amount A =

Amount B =

Financial Institution A =

Financial Institution B =

Dear :

This is in response to your request, dated May 13, 2015, as supplemented by correspondence dated July 20 2015, in which your authorized representative, on your behalf, requested a waiver of the 60-day 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, on February 18, 2014, from IRA X, of Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake by Financial Advisor A. Taxpayer A further asserts that Amount A has not been used for any other purpose.

In February 2014, Taxpayer A contacted Financial Advisor A, also an enrolled agent, to discuss the tax consequences of terminating IRA X, an annuity contract with Financial Institution A. Incorrectly believing that IRA X was a non-IRA annuity and that Taxpayer A had a basis in the contract, Financial Advisor A told Taxpayer A that approximately Amount B would be taxable. Pursuant to Financial Advisor A's advice, on February 18, 2015, the annuity contract was surrendered and at Financial Advisor A's direction, Amount A, less an amount withheld for taxes, was deposited into a non-IRA account at Financial Institution B.

In March, 2015, when Financial Advisor A was preparing Taxpayer A's 2014 tax returns and reviewing the Form 1099-R for that year, he discovered his mistake and realized that the proceeds from the distribution, Amount A, were subject to tax. Taxpayer A submitted a letter from Financial Advisor A supporting the above representations and acknowledging his 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 408(d)(3) with respect to the distribution of Amount A from 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.

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 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 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 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 are consistent with his assertion that the failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3)(A) of the Code was due to Financial Advisor A's mistaken belief that the distribution from IRA X was from a non-IRA annuity.

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 A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A, into a rollover IRA. 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 A) 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 ******* 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: