



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201138052

Uniform Issue List: 408.03-00

T:EP:RA:T2

JUL 1 2011

Legend:

Taxpayer A = ***
Financial Institution B = ***
Financial Institution C = ***
Financial Advisor D = ***
Fund E = ***
IRA X = ***

Account Y = ***

Date 1 = ***
Date 2 = ***
Amount 1 = ***

Dear ***:

This letter is in response to your request dated December 21, 2010, as supplemented by correspondence dated April 12, 2011, submitted on your behalf by your authorized representative, in which you requested 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, age 49, represents that he received a distribution from his Individual Retirement Account (IRA) at Financial Institution B in Amount 1. Taxpayer A asserts that his failure to roll over Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to errors made by Financial Advisor D of Financial Institution C. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that he wished to transfer amounts in his IRA, IRA X, at Financial Institution B to an IRA invested in Fund E, a hedge fund managed by Financial Institution C. Financial Advisor D, principal of Financial Institution C, instructed Taxpayer A on how to complete the necessary forms to accomplish a proper rollover. Per Financial Advisor D's advice, on Date 1, Taxpayer A requested a normal distribution from IRA X, instructing Financial Institution B to wire Amount 1 to Fund E. Financial Advisor D also instructed Taxpayer A to label the subscriber for his account in Fund E, Account Y, as an IRA. Taxpayer A was unaware that he had not properly rolled over Amount 1 until Date 2, when Financial Advisor D contacted him after learning that the rollover had been mishandled.

Documentation provided shows that Financial Advisor D incorrectly advised Taxpayer A that IRA X could be properly rolled over to Fund E. Specifically, Financial Advisor D has provided a statement under penalty of perjury that he advised Taxpayer A that if Taxpayer A completed the distribution forms as instructed and labeled the subscriber of Account Y as an IRA, the transfer would constitute a proper rollover.

Based on the foregoing 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 1 from IRA X at Financial Institution B.

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)(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.

Revenue Procedure 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) of the Code, 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 are consistent with his assertion that his failure to accomplish a timely rollover was caused by errors made by Financial Advisor D of Financial Institution C, which resulted in Amount 1 being deposited into Account Y, a non-IRA account.

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 X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a 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, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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.

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A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,


Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: ***