



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201426031

APR 02 2014

Uniform Issue List: 408.03-00

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XXX
XXX

Legend:

Taxpayer	=	XXX
IRA	=	XXX
Financial Institution	=	XXX
Financial Advisor	=	XXX
Amount	=	XXX

Dear XXX:

This letter is in response to your request on January 17, 2013, submitted by your authorized representative, as supplemented by correspondence dated March 20, 2013, in which you request a waiver of the 60-day rollover period 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 represents that his IRA totaling Amount, was distributed to him by Financial Institution without his knowledge or consent. Taxpayer represents that his failure to accomplish a rollover of Amount from IRA within the 60-day period prescribed by section 408(d) of the Code was due to the failure of Financial Institution to provide contemporaneous communication at the time of the distribution, which resulted in

Taxpayer being unaware of the distribution until after the 60-day period had expired. Taxpayer asserts that Amount has not been used for any purpose.

Taxpayer maintained IRA at Financial Institution. Taxpayer represents that he relied upon Financial Advisor's services and advice in managing his financial affairs, including his IRA. Taxpayer represents that he kept a credit card on file with Financial Institution, which it had used to pay administrative fees for IRA. Taxpayer asserts that he relied on Financial Institution's past use of that credit card to pay administrative fees. Taxpayer also asserts that he relied on Financial Advisor to pay fees for IRA and to notify Taxpayer if fees were due and that Financial Institution would charge the credit card kept on file for such purpose. In late 2010, Financial Institution sent Taxpayer letters requesting payment of fees and communicating that a possible consequence of non-payment would be its resignation as custodian of IRA. During this time period, Taxpayer was preoccupied with the care of his wife, who underwent several medical procedures. Taxpayer represents that he was the primary caregiver for his wife during this time period.

On October 13, 2011, Financial Institution distributed Amount from IRA to Taxpayer, after several months without directing communication to Taxpayer. Between October 2010 and October 2011, Taxpayer received no communication from Financial Institution regarding uncollected administrative fees for IRA. Financial Institution sent Taxpayer two separate confirmations of investments in IRA without noting the uncollected fees. Financial Advisor states that Financial Institution provided him with neither notice of the administrative fees due nor notice of the distribution of Amount from IRA. Taxpayer asserts that he did not authorize the distribution of Amount from IRA.

Based on the facts and representations, Taxpayer requests 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.

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 section 408(d)(3)(A) 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 submitted by Taxpayer is consistent with the assertion that Taxpayer's inability to complete a timely rollover was due to Financial Institution distributing Amount from IRA without his authorization and without notice to Financial Advisor, and without contemporaneous communication about the distribution.

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 from IRA. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 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 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 (regarding required distributions).

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 is being sent to your authorized representatives.

If you wish to inquire about this ruling, contact XXX at (XXX) XXX-XXXX. 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 Disclosure

cc: XXX
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XXX
XXX
XXX