



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Uniform Issue List: 408.03-00

T, EP, RA: T3

Legend:

Taxpayer A:

IRA X:

Financial Institution E:

Financial Institution F:

Financial Advisor R:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Amount M:

Fund B:

Fund B-1:

Financial Investment Firm N:

Dear :

This is in response to your request dated July 18, 2011, submitted on your behalf by your authorized representative, in which you request a ruling to waive 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, under age 59½, maintained an Individual Retirement Account (IRA), IRA X with Financial Institution E as custodian. Taxpayer A asserts that on Date 3, Amount M was transferred from IRA X to a non-IRA trust and that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to failures on the part of his financial advisor, on whom he relied to manage his investments, and errors committed by Financial Institution F.

Taxpayer A represents that on Date 1, under the advice of Financial Advisor R, Taxpayer A purchased an investment in Fund B, a fund controlled by Financial Institution E, to be held in IRA X. Under the terms of the investment, Financial Institution F paid the IRA custodial fees on behalf of the client for the first year. Financial Advisor R set up and managed this account which, as a real estate investment trust, (REIT) is unusual compared to other IRA investments. Because of its illiquid nature as a REIT, the custodian was not able to deduct its custodial fee from the account. Taxpayer A represents that he relied on Financial Advisor R to manage the account and that Financial Advisor R never disclosed that after the first year of pre-paid custodial fees the custodial fee would have to be paid by Taxpayer A. Taxpayer A further represents that Financial Advisor R neither paid the fee nor attempted to contacted Taxpayer A about the need to pay the custodial fee after the expiration of the first year.

According to a statement provided by Financial Advisor R, approximately six months after the initial investment in Fund B, Financial Advisor R terminated her relationship with her broker dealer and submitted a broker/dealer change notification to Financial Institution F. However, Financial Institution F never completely processed the notification and eventually lost certain records.

On Date 2, two years after the initial investment in Fund B, Financial Institution E issued a letter to Taxpayer A requesting the payment of the \$25 custodial fee. The letter states in the first paragraph that "If this account holds ... a brokerage position and payment is not received within (30) days, then sufficient holdings will

be liquidated to satisfy fees which are due." Taxpayer A represents that he was confused about the letter because it also stated that if Financial Institution E resigned as custodian they would distribute the assets to him, but because of the nature of the account he did not receive an actual distribution of assets. In addition, he did not understand that he was responsible for paying the fees because he had relied on Financial Advisor R to handle his investments for the previous seven years and all the details on his Fund B matters since the investment in Fund B. Further, due to the multiple investment strategies employed by Financial Advisor R and the large volumes of mail received on his accounts, Taxpayer A did not recognize that he had received a bill for the REIT account. Taxpayer A was not expecting a bill, and did not realize that an annual administrative fee would need to be paid from separate funds. Payment of the fee had been managed by Financial Advisor R the prior two years.

As a result of Financial Institution F losing the broker dealer notification issued by Financial Advisor R to Financial Institution F, Financial Institution F was unable to communicate to all interested parties that Financial Advisor R changed broker dealer affiliation. Accordingly, Financial Advisor R never received notification from Financial Institution E that its custodial fees were unpaid or that the assets of IRA X had been transferred to Fund B-1.

Since IRA X account did not have cash available, and the REIT was not readily convertible to cash, Financial Institution E was not able to deduct the fee from the account itself. As a consequence of the outstanding custodial fees on IRA X, on Date 3, Financial Institution E transferred from IRA X all shares of the trust corpus with a value of Amount M to another Financial Institution E trust fund, Fund B-1, a non-IRA account. Taxpayer A represents that Financial Institution E did not inform Taxpayer A that Amount M in IRA X was transferred to Fund B-1 other than reflecting the transfer in the next quarterly account statement

The quarterly statement shows on its face the name of Fund B as having four account numbers and a transfer of some shares between an account number owned by the IRA to an account number with no identified ownership. Taxpayer A represents that a phone call was never made to him from Financial Institution E explaining the nature of the problem. Taxpayer A represents that he was unaware that a custodial fee had to be paid by him, that he never received cash from the transaction initiated by Financial Institution E, and that the REIT shares had never been liquidated but instead the REIT shares were re-registered by Financial Institution E.

On Date 4, Financial Advisor R became a broker with Financial Investment Firm N and on Date 5, Financial Advisor R sent an account maintenance request to Financial Institution F on behalf of Taxpayer A in order to communicate to Financial Institution F that Financial Advisor R was associated with a new broker

dealer. In response to this request, Financial Advisor R was notified by Financial Institution F on Date 6, that IRA X had been transferred to Fund B-1.

Upon learning of this transfer for the first time, Financial Advisor R immediately consulted with Financial Institution F and Financial Institution E representatives, as well as with Taxpayer A, in order to re-instate IRA X, however, Financial Advisor R was informed by Financial Institution E that because the 60-day period had expired, the transfer was not reversible.

Internal Revenue Service Form 1099-R was issued to Taxpayer A showing Amount M as a taxable distribution.

Based on the 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 M.

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.

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) 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 you is consistent with your assertion that the failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to failures on the part of your financial advisor on whom you relied to manage your investments, and errors committed by Financial Institution F in processing Financial Advisor R's notification of change in her broker/dealer relationship.

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 IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

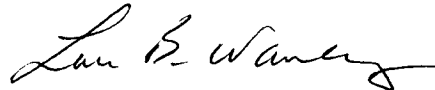
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please contact XXXXXXXXXXXXXXXX (XXXXXXX) by phone at XXXXXXXXXXXX or fax at XXXXXXXX.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky".

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

- Deleted Copy of Ruling Letter
- Notice of Intention to Disclose