



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

201237027

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

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JUN 21 2012

T:EP:RA:TZ

Legend:

Taxpayer A \*\*\*

IRA Y \*\*\*

Account Z \*\*\*

REIT M \*\*\*

REIT N \*\*\*

REIT O \*\*\*

REIT P \*\*\*

Financial  
Institution C \*\*\*

Financial  
Institution D \*\*\*

Financial  
Advisor G \*\*\*

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Amount 1           \*\*\*  
Date 1               \*\*\*  
Year 1               \*\*\*  
Year 2               \*\*\*  
Year 3               \*\*\*

Dear \*\*\*:

This letter is in response to your request on August 27, 2010, submitted by your authorized representative, as supplemented by correspondence dated February 28, 2011 and March 29, 2011, 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 A, age 47, represents that his failure to accomplish a rollover of Amount 1 from IRA Y within the 60-day period prescribed by section 408(d) of the Code was due to errors made by Financial Institution C and Financial Institution D. Taxpayer A asserts that Amount 1 has not been used for any purpose.

Taxpayer A maintained IRA Y at Financial Institution C. Financial Institution D held REIT M and REIT N as investments within IRA Y. Financial Institution C gave up custodianship of IRA Y due to \$15 in uncollected administrative fees. On Date 1, Financial Institution C distributed Amount 1 from IRA Y to Taxpayer A. At this time, Financial Institution D immediately converted IRA Y into Account Z. Within Account Z, Financial Institution D converted REIT M into REIT O, a non-qualified investment, and converted REIT N into REIT P, another non-qualified investment. Taxpayer A never had possession of Amount 1.

During Year 1 and Year 2, Financial Institution D sent Taxpayer A correspondence and account statements that identified Account Z as an IRA and identified REIT O and REIT P as tax-qualified investments. In Year 3, Financial Institution D sent Taxpayer A an Account Z year-end statement for Year 2 that reflected that Financial Institution D had reclassified REIT O and REIT P as non-qualified investments.

Taxpayer A provided copies of the paperwork that he completed at the time that he opened IRA Y at Financial Institution C. It included notices that service fees for IRA Y would be charged to the account, and, that in the event that IRA Y was terminated, Financial Institution C would convert it into another IRA. Further, using the paperwork provided by Financial Institution C, Taxpayer A designated Financial Advisor G as his

representative to receive IRA Y account statements and correspondence. After Financial Institution C gave up custodianship of IRA Y, Financial Institution D listed Financial Advisor G as Taxpayer A's financial advisor in all Account Z correspondence and account statements.

Taxpayer A further represents that he relied upon Financial Advisor G's services and advice in making decisions regarding IRA Y. Taxpayer A asserts that throughout Year 2, he understood and viewed Account Z to be an IRA and REIT O and REIT P to be qualified investments. Taxpayer A asserts that he neither gave Financial Institution D his permission nor his direction to convert IRA Y into Account Z, convert REIT M into REIT O, and convert REIT N into REIT P. Furthermore, Financial Advisor G provided a sworn statement that neither Financial Institution C nor Financial Institution D provided her with correspondence and account statements for IRA Y and for Account Z.

Based on the facts and representations, Taxpayer A 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 1.

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 the taxpayer, including documentation from Financial Institution C and from Financial Institution D, is consistent with the assertion that Taxpayer A's inability to complete a timely rollover was due to errors committed by these financial institutions.

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 Y. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling 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 contributions, Amount 1 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.

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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If you wish to inquire about this ruling, contact \*\*\* at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclosure

cc:

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