



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201316026

JAN 24 2013

T:EP:RA:T1

Uniform Issue List: 408.03-00

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Legend

Taxpayer A	=	XXXXXXXXXXXXXXXXXX
Taxpayer B	=	XXXXXXXXXXXXXXXXXX
IRA C	=	XXXXXXXXXXXXXXXXXX
IRA D	=	XXXXXXXXXXXXXXXXXX
Company E	=	XXXXXXXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXXXXXXX
Amount 2	=	XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

This is in response to your request dated March 22, 2012, as supplemented by correspondence dated June 28, 2012, in which you request a waiver of the 60-day rollover 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 equal to Amount 1 from IRA C, which was maintained by Company E. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) was due to his lack of knowledge and confusion concerning the distribution.

Taxpayer B represents that she received a distribution equal to Amount 2 from IRA D, which was maintained by Company E. Taxpayer B asserts that her failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) was due to her lack of knowledge and confusion concerning the distribution.

Taxpayer A and Taxpayer B (hereafter the "Taxpayers") maintained IRA C and IRA D, respectively, with Company E. On August , 20 , the Taxpayers completed IRA Distribution Request Forms with Company E requesting a transfer of Amount 1 and Amount 2, respectively, from IRA C and IRA D to their separate non-IRA accounts with Company E. The purpose of the transfers was to increase their trading power for stock options in their non-IRA accounts.

Even though the IRA Distribution Request Forms are clearly completed to request a "Normal Distribution" and transfer to non-IRA accounts, the Taxpayers argue that they thought transferring the shares (stocks within the IRAs were liquidated) would not be considered a distribution. The mistake was discovered during the preparation of the Taxpayers 2011 tax returns.

Based on the above facts and representations, two rulings are requested: (1) Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA Account C, and (2) Taxpayer B requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA Account D.

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 or 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury 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. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

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 Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, the Taxpayers have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected their ability to timely roll over the distributions of Amount 1 and Amount 2. The facts indicate that the Taxpayers completed IRA Distributions Forms with the intention of transferring Amount 1 and Amount 2 from their IRAs to their non-IRA accounts with Company E to increase their trading power within the non-IRA

accounts. The information presented indicates that the inability of the Taxpayers to roll over Amounts 1 and 2, respectively, into IRAs within the 60-day period was, at all times, within the reasonable control of the Taxpayers.

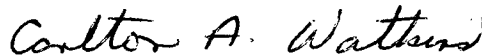
Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amount 1 from IRA B and Amount 2 from IRA C.

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 taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact (Identification No. XXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter