

200920055



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

FEB 23 2009

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

SET:EP:RA:TI

Control Number:

Legend:

Taxpayer =

IRA A =

Financial Institution B =

IRA C =

Financial Institution D =

IRA E =

Account F =

Financial Institution G =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated August 13, 2007, as modified and supplemented by facsimiles dated November 5 and November 15, 2007, February 6, and June 7, 2008, and an email sent on January 29, 2009, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3)(I) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 2 from IRA A, an individual retirement account (IRA) maintained with Financial Institution B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer, age 56 at the time of the distribution of Amount 2 from IRA A, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the erroneous actions by Financial Institution G. Amount 2 was deposited into Account F, a non-IRA account. Amount 2 remains in Account F and has not been used for any purpose.

Taxpayer maintained IRA A and IRA C, IRAs as described in section 408(a) of the Code. Taxpayer represents that on January 18, 2005, she entered Financial Institution G for the purpose of making a rollover contribution of Amount 1 into an IRA. An employee of Financial Institution G assisted Taxpayer in completing an IRA application form. Amount 1, a distribution from IRA C with Financial Institution D, was properly deposited into IRA E. Three days later (on January 21, 2005), Taxpayer returned to Financial Institution G intending to deposit a check totaling Amount 2 into an IRA. Amount 2 had been distributed from IRA A on January 21, 2005. Taxpayer asked to speak to the same employee who assisted her with the adoption of IRA E. When Taxpayer was informed the same employee was not working on January 21, 2005, she decided to leave. However, another bank employee convinced Taxpayer she could assist her.

Taxpayer's ability to speak English is limited. Her deceased spouse handled all of their financial matters. It appears that when Taxpayer returned to Financial Institution G on January 21, 2005, she assumed that the application to open IRA E which had been prepared on January 18, 2005 (three days earlier) could be used to make a similar rollover contribution of Amount 2. However, for an unexplained reason, Amount 2 was deposited into Account F, a non-IRA account. By letter dated October 22, 2007, Financial Institution G stated there may have been a miscommunication between its employee and Taxpayer. Further confusion surrounding the deposit of Amount 2 into Account F occurred when Financial Institution G issued Taxpayer a Form 5498 showing a rollover

contribution of Amount 3 (sum of Amounts 1 and 2) which Taxpayer relied on. Hence, Taxpayer believed Amount 2 had been deposited into an IRA.

Taxpayer has difficulty understanding complex financial matters. In her submission, she indicated that she had maintained an IRA for many years and intended to continue having an individual retirement plan. This is supported by the historical facts.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3)(I) of the Code with respect to the distribution of Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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 60<sup>th</sup> 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 60<sup>th</sup> 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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.

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 sections 408(d)(3)(I) and 402(c)(3)(B) 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 the documentation submitted by Taxpayer is consistent with her assertion that her failure to accomplish a timely rollover of Amount 2 was caused by erroneous actions of an employee of Financial Institution G. Such actions are evidenced by the issuance of a Form 5498 showing a rollover contribution which included Amount 2.

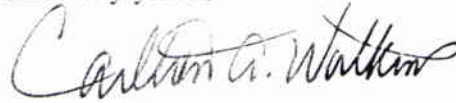
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA A. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 2 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 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.

A copy of this letter ruling has been 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 \_\_\_\_\_, (I.D. # \_\_\_\_\_), at ( \_\_\_\_\_ ) \_\_\_\_\_.

Sincerely yours,



Manager  
Employee Plans Technical Group 1

cc:

Enclosures:

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Notice of Intention to Disclose, Notice 437