



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

201022024

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 09 2010

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

| | |
|-------------------------|---|
| Taxpayer A | = |
| IRA B | = |
| Financial Institution C | = |
| Organization D | = |
| Amount 1 | = |
| Amount 2 | = |
| Amount 3 | = |
| Amount 4 | = |

Dear :

This letter is in response to a request for a letter ruling dated December 18, 2009, as supplemented by additional correspondence dated January 15, and March 2, 2010, from your authorized representative, in which you request a waiver of 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, age , represents that she took distributions from IRA B totaling Amount 4. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was the failure to follow Taxpayer A's instructions to timely return the investment and the fraudulent conduct by Organization D. Taxpayer A further represents that Amount 4 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement account (IRA) with Financial Institution C, under section 408(a) of the Code. Taxpayer A represents that religious ministers in her community convinced Taxpayer A to invest in Organization D. Based on these recommendations Taxpayer A believed that she could make higher returns on her IRA that would allow her to better "engage in God's work and his ministry". On June , 20 , Taxpayer A withdrew Amount 1 from IRA B and distributed Amount 2 to help needy families who were in financial difficulty. On June , 20 , Taxpayer A withdrew Amount 3 from IRA B and combined with the remaining funds from the June withdrawal, invested a total of Amount 4 with Organization D. Taxpayer A represents that intended the investment to be in an IRA with Organization D but learned in July that an IRA account with Organization D was not available. Also, during the first part of July Taxpayer A had difficulty getting the interest earned on the investment and subsequently became concerned about the safety of the investment with Organization D.

On July , 20 , Taxpayer A began the process of obtaining a refund of her investment with Organization D for purposes of reinvesting Amount 3 in IRA B. Despite repeated requests for a refund and threats of criminal legal action, Taxpayer A was not able to secure a complete return of her investment until October , 20 . On October , 20 , the U.S. Securities and Exchange Commission filed an emergency action against Organization D alleging a Ponzi scheme and requested a freeze of all of it's assets.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 3. The rollover of Amount 1 is barred under the "one rollover per year" rule of section 408(d)(3)(B) of the Code.

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 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) 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)(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 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, 2002, 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 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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 3 was due to the failure of Organization D to follow her instructions to refund Amount 3 within the 60-day rollover period.

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 3 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 3 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 3 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. The rollover of Amount 1 is barred under the "one rollover per year" rule of section 408(d)(3)(B) 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 ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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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

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: