

201029021



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 29 2010

408.03-00

XXXX
XXXX
XXXX

SETTLEMENT

Legend:

Taxpayer A = xxxx

IRA X = xxxx

Amount N = xxxx

Financial Institution D = xxxx

Financial Institution E = xxxx

Date 1 = xxxx

Dear xxxx:

This is in response to your letter dated October 15, 2009, requesting a letter ruling waiving the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been made subject to penalties of perjury:

Taxpayer A, age 57, represents that on Date 1, he received a distribution from IRA X totaling Amount N. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period presented by section 408(d)(3) was due to error committed either by Financial Institution D or Financial Institution E. He further asserts that Amount N has not been used for any purpose and remains deposited with Financial Institution E.

Taxpayer A maintained IRA X at Financial Institution D. On Date 1, Taxpayer A performed an online transaction which he intended to be a trustee-to-trustee

xxxx

Page 2

transfer of Amount N from IRA X to a new IRA at Financial Institution E. Taxpayer A intended to establish the new IRA and effect transfer of Amount N into such IRA in a single online transaction. Taxpayer A represents that although he identified the account he intended to establish as an "IRA Rollover", in the space for such naming on the online application form, the Financial Institution E online documents he completed on Date 1 to establish an IRA at Financial Institution E and effect the transfer of Amount N to it were documents for the establishment of a non-IRA investment account.

Financial Institution E deposited the IRA funds it received from Financial Institution D into the type of investment account designated by the application form Taxpayer A submitted. Taxpayer A did not realize for several years after Date 1 that he had completed the wrong application form. He represents that he became aware that Amount N was not in an IRA when he received a letter from the Internal Revenue Service informing him that IRA X had been distributed.

Taxpayer A asserts that the internal policies and procedures of either Financial Institution D or Financial Institution E should have flagged the transaction as a non-standard transaction, and, in turn, both Financial Institution D and Financial Institution E should have obtained positive confirmation before final processing of the transaction.

Based on the above 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 N from IRA X.

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) 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) 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, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), 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.

Taxpayer A has not provided any evidence or documentation which indicates that Financial Institution D committed any financial error in its transfer of Amount N of IRA X to Financial Institution E pursuant to Taxpayer A's instructions.

Taxpayer A has not provided any evidence or documentation which indicates that Financial Institution E committed a financial error by processing the online application which Taxpayer A completed for the investment of Amount N.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount N from IRA X.

xxxx

Page 4

201029021

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling 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.

If you wish to inquire about this ruling, please contact xxxx, I.D. #xxxx
by telephone at xxxx. Please address all correspondence to
SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose