



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 12 2010

Uniform Issue List: 408.03-00

SE: T: EP: RA: TI

Legend:

- Taxpayer A = *****
- IRA A = *****
- Account 1 = *****
- Amount 1 = \$*****
- Amount 2 = \$*****
- Financial Institution A = *****
- Financial Institution B = *****

Dear *****:

This is in response to your request dated *****, as supplemented by communication dated *****, and *****, 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, age 78, represents that she received a net distribution totaling Amount 1 (Amount 2 less surrender charge) from individual retirement account ("IRA") A maintained with Financial Institution A. 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 due to an error on the part of Financial Institution B.

In response to financial conditions, Taxpayer A closed IRA A during December **** to roll the IRA funds into an investment in another qualified account with lower risks associated with it. Taxpayer A withdrew Amount 1 from IRA A and received a check from Financial Institution A made payable to Taxpayer A's IRA, in order that Taxpayer A

could open a rollover IRA with Financial Institution B, and have the funds invested in a certificate of deposit. Financial Institution B, however, opened Account 1 as a non-qualified account despite the language on the check designating the payee as Taxpayer A's IRA. It is represented that Taxpayer A thought she had completed a tax-free rollover of Amount 1 until *****, when Taxpayer A's accountant was furnished a Form 1099-R that Taxpayer A had received from Financial Institution A for tax year 20 . Amount 1 remains in Account 1 and has not been used for any other purpose.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount 1 contained in section 408(d)(3) of the Code.

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)(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) or section 408(b)(3).

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 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.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error on the part of Financial Institution B in opening Account 1 as a non-qualified account.

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 A. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a rollover IRA or other eligible retirement plan. 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 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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.

If you wish to inquire about this ruling, please contact ***** (Identification Number *****) at (***) ***-****. Please address all correspondence to

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager,
Employee Plans Technical Group 1