

201031033



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

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**Legend:**

- Taxpayer A = \*\*\*\*\*
- IRA Annuity A = \*\*\*\*\*
- IRA Annuity B = \*\*\*\*\*
- Account 1 = \*\*\*\*\*
- Amount 1 = \$\*\*\*\*\*
- Amount 2 = \$\*\*\*\*\*
- Amount 3 = \$\*\*\*\*\*
- Financial Institution A = \*\*\*\*\*
- Financial Institution B = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your request dated \*\*\*\*\*, as supplemented by communication dated \*\*\*\*\*, 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 \*\*, represents that he maintained IRA Annuity A and IRA Annuity B with Financial Institution A. Taxpayer A asserts that his failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 408(d)(3) of the Code was due

to misleading advice and instruction given to Taxpayer A by a financial advisor at Financial Institution B.

In response to financial conditions adversely affecting Financial Institution A, Taxpayer A took total distributions from IRA Annuity A and IRA Annuity B and made net deposits of Amount 1 and Amount 2, respectively, from the proceeds of the IRA annuities into Account 1, a nonqualified, taxable account with Financial Institution B. Due to certain health issues, Taxpayer A did not realize at this point in time that the two annuities were IRA type accounts. Taxpayer A effectuated the fund withdrawals through a financial advisor at Financial Institution B, who was previously responsible for having invested Taxpayer A's money in IRA Annuity A and IRA Annuity B. The financial advisor did not inform Taxpayer A that the distributions from IRA Annuity A and IRA Annuity B would be taxable when withdrawn and subject to high surrender charges. Taxpayer A represents that the whole purpose for removing his funds from the IRA annuities with Financial Institution A was to prevent further loss in value of his investments. Taxpayer A represents that he did not become aware of the taxability of Amount 3 (Amount 1 and 2) until Taxpayer A's accountant was furnished two Forms 1099-R that Taxpayer A had received from Financial Institution A. Taxpayer A represents that the financial advisor at Financial Institution B who effectuated the fund withdrawals and who knew that the distributions were from IRA annuities failed to alert him both to the consequences for removing the funds from his IRA annuities and how to open a qualified rollover account. Amount 3 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 3 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 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)).

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 demonstrates that his failure to accomplish a timely rollover was caused by misleading advice and instruction received from a financial advisor at Financial Institution B, who should have ensured that Taxpayer A would complete a timely rollover of Amount 3.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 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 3 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