



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUL 27 2010

201042042

Uniform Issue List: 408.03-00

SET:EP:RA:T1

Legend:

Taxpayer A	=
IRA B	=
Financial Institution C	=
Annuity D	=
Financial Institution E	=
Financial Institution F	=
Financial Institution G	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=

Dear :

This letter is in response to a request for a letter ruling dated December 2, 2009, as supplemented by additional information dated March 10, April 1, May 15, May 25, and June 21, 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 52, represents that she took a distribution from IRA B totaling Amount 1. 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 by Financial Institution F. Taxpayer A further asserts that Amount 4 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code with Financial Institution C. In April, 2008, Taxpayer A met with her financial advisor at Financial Institution F. He recommended that Taxpayer A transfer funds in IRA B to a variable annuity contract with Financial Institution E because it promised a higher rate of return. He also suggested that Taxpayer A's spouse transfer Amount 2 from a non-IRA account to a similar investment vehicle with Financial Institution E. On May 2, 2008, at Taxpayer A's request, Financial Institution C liquidated IRA B and mailed to Taxpayer A a check totaling Amount 1. On May 6, 2008, Amount 1 was deposited in Taxpayer A and her spouse's joint checking account with Financial Institution G.

On June 3, 2008, the advisor from Financial Institution F went to Taxpayer A's home to arrange the transfer from IRA B to an IRA annuity with Financial Institution E. Following the advisor's instructions, Taxpayer A gave him one check totaling Amount 3 for purchase of an IRA and non-IRA annuity with Financial Institution E. On June 12, 2008, on Taxpayer A's behalf, her financial advisor at Financial Institution F deposited the check totaling Amount 3 with Financial Institution E. This included most of the distribution from IRA B (Amount 4) as well as funds in her spouse's non-IRA account (Amount 2). Taxpayer A instructed her advisor that a portion of the check totaling Amount 4 be invested in an IRA annuity. However, Taxpayer A's intent was never communicated to Financial Institution E by the advisor and Amount 3 was deposited in a non-qualified account (Annuity D). The incorrect deposit was discovered in January of 2009. Financial Institution F has acknowledged the error in writing.

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) of the Code with respect to the distribution of Amount 4.

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 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 4 was due to an error by Financial Institution F.

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 4 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of

this letter ruling to contribute Amount 4 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 4 will be considered a rollover contribution within the meaning of section 408(d)(3).

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,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: