



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 02 2010

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Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A	=
IRA B	=
Financial Institution C	=
Financial Institution D	=
Fund E	=
Financial Institution F	=
Financial Institution G	=
Account H	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated June 22, 2010, as supplemented by email correspondence dated, August 20, 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 41, represents that he took a distribution from IRA B totaling Amount 1. Taxpayer A asserts that his 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 D. Taxpayer A further asserts that Amount 1 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. Financial Institution D manages Fund E, a pooled investment fund that invests in publicly-traded equity securities of companies with market capitalizations below certain prescribed levels. The custodian for Fund E is Financial Institution F, a subsidiary of Financial Institution G. Financial Institution D had served as an investment advisor to Taxpayer A by regularly providing investment, asset management and advisory services. In September, 2008, a financial advisor at Financial Institution D recommended that Taxpayer A transfer funds in IRA B to Fund E because it was a good investment opportunity.

On September 8, 2008, the financial advisor at Financial Institution D prepared, on Taxpayer A's behalf, a subscription agreement for investing in Fund E. Taxpayer A completed and executed the subscription agreement electing an investment of Amount 1 and designating "Taxpayer A IRA" as the investor in the Fund. Taxpayer A included this designation on the subscription agreement as a written instruction to Financial Institution D that the new account be an IRA. Financial Institution D mailed a new account opening form to Financial Institution G listing "Taxpayer A IRA" as accountholder and directed it to receive a wire transfer of assets from IRA B per the subscription agreement. Subsequently, Taxpayer A directed Financial Institution C to execute a wire transfer of Amount 1 from IRA B to an account with Financial Institution G in the name of "Taxpayer A IRA". Financial Institution D informed Financial Institution C that Financial Institution G would accept a transfer of all assets in IRA B for deposit in a like-titled account, i.e., an IRA. The transfer was completed on or around September 12, 2008.

Taxpayer A expected Financial Institutions D and G to coordinate the transfer of Amount 1 in a manner that assured it would be deposited into an IRA. Taxpayer A had no direct contact with Financial Institution G regarding the transaction. Financial Institution D instructed Financial Institution G that Account H be labeled "Taxpayer A IRA". After the transfer of Amount 1 from IRA B, Taxpayer A received monthly statements for Account H which indicated it was an IRA.

In late March of 2010, Taxpayer A's financial advisor at Financial Institution D communicated with Financial Institution G regarding another client's beneficiary designation for Fund E. After a series of discussions, on or around April 27, 2010, Financial Institution G informed Taxpayer A's financial advisor that Account H was not an IRA even though he was told it would be an IRA and that it was titled as an IRA account. Financial Institution D has acknowledged in writing that it erred when it failed to assure that Amount 1 would be transferred to an IRA.

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 1. 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 his assertion that his failure to accomplish a timely rollover of Amount 1 was due to an error by Financial Institution D.

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 B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 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 1 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: