



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201106024

NOV 19 2010

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Financial Institution B =

Financial Institution C =

IRA X =

Amount 1 =

Dear :

This is in response to your ruling request dated June 2, 2010, from your authorized representative, as supplemented by correspondence dated June 30, October 29, and November 2, 2010, 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 65 at the time of the events explained below, represents that he took a distribution from IRA X 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 the failure of Financial Institution C to follow Taxpayer A's instructions. Taxpayer A further asserts that Amount 1 has not been used for any purpose.

Taxpayer A represents that he was the owner of IRA X, a qualified individual retirement arrangement ("IRA") established and maintained at Financial Institution B under the rules of section 408 of the Code. Taxpayer A asserts that he requested a distribution of Amount 1 from IRA X in March, 20 , with the intention of rolling over the proceeds to an IRA at Financial Institution C. The distribution was made by Financial Institution B on March , 20 , by wire transfer into Taxpayer A's savings account at Financial Institution B. Taxpayer A further asserts that within a few days he attempted to open an IRA at Financial Institution C and transfer Amount 1 to the IRA. Taxpayer A asserts that

he completed the application form provided by a representative of Financial Institution C to establish a qualified IRA and followed the instructions set forth to effectuate a qualified rollover of Amount 1 within the 60-day rollover period. Taxpayer A asserts that he was provided an incorrect form, which was designed to establish a non-IRA brokerage account rather than an IRA account. Despite the fact that Taxpayer A noted on the form that it was to be a rollover IRA for the benefit of Taxpayer A, the funds were placed in a non-IRA brokerage account at Financial Institution C. Taxpayer A represents that he discovered that the rollover of Amount 1 had not been completed during the preparation of his 20 income tax return.

Based on the above facts and representations, Taxpayer A requests a ruling 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 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) 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)(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 the documentation submitted by Taxpayer A in this case is consistent with his assertion that the failure to accomplish a timely rollover of Amount 1 from IRA X was due to the failure of Financial Institution C to follow his instructions to establish an IRA on his behalf and roll Amount 1 into it.

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 X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days, measured from the date of the issuance of this letter ruling, to make a rollover contribution of an amount no greater than Amount 1 to an IRA (or IRAs) described in section 408 of the Code. Provided all other requirements of section 408(d)(3) of the Code except the 60-day requirement are met with respect to such IRA contribution, the contribution by Taxpayer A will be considered a rollover contribution within the meaning of section 408(d)(3) 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 ruling does not authorize the rollover of amounts that are required to be distributed by sections 408(a)(6) and 401(a)(9) of the Code.

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.


Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxxxxxx
(Government Identification Number xx-xxxx) by phone at (xxx) xxx-xxxx or by fax at
(xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose

cc: