



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

201126041

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR 05 2011

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A

IRA B

IRA C

Financial Institution D

Financial Institution E

Financial Institution F

Amount 1

Amount 2

Dear :

This letter is in response to a request for a letter ruling dated April 5, 2010, as supplemented by additional correspondence dated September 16, and October 28, 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 57, represents that she received a distribution from IRA B and IRA C totaling Amount 1 and Amount 2, respectively. 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 her reliance on instructions given to her by a representative of Financial Institution D (where IRA B resided) which resulted in the funds being placed in

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non-IRA accounts. Taxpayer A further represents that Amount 1 and Amount 2 have not been used for any other purpose.

Taxpayer A maintained IRA B and IRA C, individual retirement accounts, under section 408(a) of the Code with Financial Institutions D and E respectively. Documentation submitted indicates that in early 2009 Taxpayer A discussed, with a representative of Financial Institution D (where IRA B resided), moving IRA B to another financial institution because of the high fees at Financial Institution D. The representative at Financial Institution D had been Taxpayer A's advisor since 2003 and Taxpayer A always relied on the advice provided by the representative. The representative instructed Taxpayer A not to spend any of the funds but place the funds in a certificate of deposit at a bank within 5 days of receiving the funds so she would not incur any taxes or penalties.

Following Financial Institution D's representative's instructions, Taxpayer A withdrew Amount 1 from IRA B on March 4, 2009, and deposited it into a certificate of deposit at Financial Institution F on March 10, 2009. In addition, using the same instructions, Taxpayer A withdrew Amount 2 from IRA C on May 23, 2009, and deposited it into a certificate of deposit at Financial Institution F on May 29, 2009, to consolidate her investments at one place. However, the certificates of deposits at that Taxpayer A established at Financial Institution F were non-IRA accounts. Taxpayer A's error was discovered by her tax preparer while preparing her 20 tax return

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 and Amount 2.

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,

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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 facts and representations submitted for this ruling request do not demonstrate how Taxpayer A was prevented from completing the timely rollover of her IRAs to an eligible retirement plan such as an IRA.

You have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected your inability to timely roll over Amounts 1 and 2 or any portion thereof, to an IRA. We do not believe that the advice given to Taxpayer A by Financial Institution D's representative rises to the level of financial advisor error. Financial Institution D's representative told Taxpayer A to deposit the funds in a CD within 5 days, which is well within the 60-day rollover period window. Taxpayer A knew the funds were being distributed from IRAs and since it was her stated purpose to move her IRAs, it is reasonable to assume that Taxpayer A should have known that the funds had to be deposited into another IRA. The information submitted by you demonstrates that you are solely responsible for failing to timely deposit Amounts 1 and 2 into an IRA.

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Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to Amounts 1 and Amount 2. Amounts 1 and Amount 2 are not eligible to be treated as rollover contributions within the meaning of section 408(d)(3) and must be included in Taxpayer A's gross income for the 20 taxable year.

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 that 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  
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: