



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201129045

APR 26 2011

Uniform Issue List: 408.03-00

SE:T:EP:RA:TL

Legend:

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

Dear *****:

This is in response to your request dated *****, as supplemented by correspondence 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 on *****, a trustee to trustee transfer from her individual retirement account ("IRA A") totaling Amount 1, and a trustee to trustee transfer from IRA B of Amount 2 occurred, with both transfers going into Account A. Both IRA A and IRA B and Account A were held by Financial Institution A. Taxpayer A asserts that her purpose in requesting the two transfers was to combine the two IRAs into one IRA within a grantor trust. Taxpayer A asserts that neither Amount 1 nor Amount 2 have been used for any other purpose.

Taxpayer A represents that her financial advisor believed that a trustee to trustee transfer from IRA A of Amount 1 and a trustee to trustee transfer from IRA B of Amount

2 could be effected in order to place the funds into an IRA within a grantor trust benefitting Taxpayer A. Taxpayer A's financial advisor requested that IRA A and IRA B be rolled over into an IRA within a grantor trust also maintained by Financial Institution A. Despite the advisor's instructions, a broker representative from Financial Institution A did not roll the funds over into an IRA within a grantor trust, but correctly determined that a grantor trust could not be the owner of an IRA. Instead, the funds were directly transferred from IRA A and IRA B into Account A, a standard non-IRA account, maintained within a grantor trust.

Upon discovering in the following year (****) that Amount 1 and Amount 2 were complete distributions, Taxpayer A requested an additional 60 days be granted to place Amount 1 and Amount 2, the original amounts in IRA A and IRA B, respectively, into an IRA in Taxpayer A's name.

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 Amount 1 and Amount 2 contained in section 408(d)(3) of the Code in this instance.

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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by the failure of her financial advisor and representatives of Financial Institution A to provide Taxpayer A with correct information regarding IRA rollovers and grantor trusts.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 from IRA A and Amount 2 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 and Amount 2 into an 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 1 and Amount 2 will be considered rollover contributions 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