



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

JUN 01 2011

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Uniform Issue List: 408.03-00

T:EP:RA:T1

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Legend:

- Taxpayer = \*\*\*\*\*
- IRA A = \*\*\*\*\*
- IRA B = \*\*\*\*\*
- IRA C = \*\*\*\*\*
- Account A = \*\*\*\*\*
- Amount 1 = \$\*\*\*\*\*
- Amount 2 = \$\*\*\*\*\*
- Amount 3 = \$\*\*\*\*\*
- Financial Institution A = \*\*\*\*\*
- Financial Institution B = \*\*\*\*\*
- Financial Institution C = \*\*\*\*\*

Dear \*\*\*\*\*.

This is in response to your request 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 represents that on \*\*\*\*\*, he received distributions of Amount 1 and Amount 2 from his individual retirement accounts ("IRA A" and "IRA B" respectively) from Financial Institution A. Taxpayer asserts that his purpose in taking the distributions was to roll the funds over into an IRA annuity with Financial Institution B. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to unlawful and fraudulent actions of Taxpayer's financial advisor. Taxpayer further represents that neither Amount 1 nor Amount 2 has been used for any purpose.

Taxpayer represents that he received a distribution from IRA A of Amount 1 and from IRA B, Amount 2, in order to roll the funds into an IRA annuity ("IRA C") with Financial Institution B. Upon receiving the two distributions, Taxpayer deposited the funds into Account A with Financial Institution C for a short time before moving Amount 3 into what he believed was IRA C with Financial Institution B. The following year, Financial Institution B notified Taxpayer that his financial advisor had lost her registration with Financial Institution B. Taxpayer then learned that his financial advisor had deposited Amount 3 into her own personal account, and not into IRA C. Taxpayer also learned that the statements over the past year purported to have come from IRA C with Financial Institution B were forgeries. Taxpayer has filed complaints with relevant local and federal authorities.

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 3 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 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)).

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.

Taxpayer represents that Financial Institution B is willing to issue Taxpayer an IRA annuity no greater than Amount 3.

The information presented and documentation submitted by Taxpayer is consistent with his assertion that his failure to accomplish a timely rollover was caused by the fraudulent and illegal actions of his financial advisor.

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 and Amount 2 from IRA A and IRA B, respectively. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 into an eligible retirement plan or to have Amount 3 converted into a qualified IRA annuity. 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 3 will be considered a rollover contribution 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