



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201138051

Uniform Issue List: 408.03-00

T:EP:RA:T2

JUN 28 2011

Legend:

Taxpayer A = ***

Taxpayer B = ***

Financial Institution C = ***

Financial Institution D = ***

IRA A = ***

IRA B = ***

Fund F = ***

Financial Advisor X = ***

Year Y = ***

Date 1 = ***

Date 2 = ***

Amount 1 = ***

Amount 2 = ***

Account A = ***

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Account B

= ***

Dear ***:

This letter is in response to your request dated December 8, 2010, as supplemented by correspondence dated March 14, 2011, submitted on your behalf by your authorized representative, in which you requested 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 47, and his wife, Taxpayer B, age 51, represent that they received distributions from their Individual Retirement Accounts (IRAs) at Financial Institution C in Amounts 1 and 2, respectively. Taxpayers A and B assert that their failure to roll over Amounts 1 and 2 within the 60-day period prescribed by section 408(d)(3) was due to errors made by Financial Advisor X of Financial Institution D. Amounts 1 and 2 have not been used for any other purpose.

Taxpayers A and B represent that they wished to invest portions of their IRAs at Financial Institution C in Fund F, a hedge fund managed by Financial Institution D. Financial Advisor X, principal of Financial Institution D, advised Taxpayers A and B that they could properly roll over the IRAs to Fund F by labeling the subscribers to their accounts in Fund F as IRAs. Financial Advisor X also instructed Taxpayers A and B on how to complete the distribution request forms for their accounts, IRAs A and B, respectively, at Financial Institution C. On Date 1, Taxpayers A and B signed the distribution request forms, checking the boxes marked "Direct Rollover to a qualified retirement plan," and requesting that Financial Institution C wire Amounts 1 and 2 from IRAs A and B to Fund F.

On Date 2, Financial Advisor X informed Taxpayer A that the transfers of Amounts 1 and 2 to Accounts A and B, respectively, with Fund F may not have constituted proper rollovers. Taxpayer A contacted a representative of Financial Institution C, who told him that both Amounts 1 and 2 had been rolled over to a qualified retirement plan. However, after learning from Financial Advisor X's tax counsel that Amounts 1 and 2 were not properly rolled over, Taxpayers A and B initiated this letter ruling request.

Documentation provided shows that Financial Advisor X incorrectly advised Taxpayers A and B that their IRAs with Financial Institution C could be properly rolled over to Fund F. Specifically, Financial Advisor X has provided a statement under penalty of perjury explaining that he advised Taxpayers A and B that if they labeled the

subscribers to Accounts A and B as IRAs, the transfers of Amounts 1 and 2 to Fund F would constitute non-taxable IRA rollovers.

Documentation also shows that for calendar Year Y, Taxpayers A and B received Forms 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing the distributions of Amounts 1 and 2. Box 7 (Distribution Code(s)) of each form is coded "G," indicating a "Direct Rollover" to a qualified plan.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to the distribution of Amounts 1 and 2 from IRAs A and B at Financial Institution C.

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.

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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.

Revenue Procedure 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 documentation submitted by Taxpayers A and B are consistent with their assertion that their failure to accomplish timely rollovers was caused by errors made by Financial Advisor X of Financial Institution D, which resulted in Amounts 1 and 2 being deposited into Accounts A and B, non-IRA accounts.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount 1 from IRA A and Amount 2 from IRA B. Taxpayers A and B are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts 1 and 2 into rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amounts 1 and 2 will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This letter expresses no opinion as to whether the IRAs described herein satisfied the requirements of section 408 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.

A copy of this letter is being 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 ***. Please address all correspondence to SE:T:EP:RA:T2.

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Sincerely,

A handwritten signature in black ink, appearing to read "Donzell Littlejohn", with a stylized flourish at the end.

Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: ***