



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201206025

NOV 18 2011

Uniform Issue List: 408.03-00

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T:EP.RA:T2

Legend:

Taxpayer A \*\*\*

IRA X \*\*\*

Account Y \*\*\*

Financial  
Institution P \*\*\*

Financial  
Institution Q \*\*\*

Amount 1 \*\*\*

Financial  
Advisor Z \*\*\*

Date 1 \*\*\*

Date 2 \*\*\*

Date 3 \*\*\*

Dear \*\*\*:

This letter is in response to your letter dated July 27, 2010, submitted by your authorized representative, as supplemented by correspondence on December 14, 2010,

**201206025**

January 13, 2011, and April 5, 2011, 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,     years old, represents that on Date 1, he received a distribution of Amount 1 from Financial Institution P and that he intended to roll it over into another IRA at Financial Institution Q. He represents that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to a misrepresentation made by Financial Advisor Z. Taxpayer A asserts that Amount 1 has not been used for any purpose.

Taxpayer A asserts that Financial Institution Q required him to open Account Y, a checking account, in order to facilitate a rollover from IRA X into an IRA at Financial Institution Q. On Date 2, Taxpayer A deposited Amount 1 into Account Y. Taxpayer A called Financial Institution Q to inquire how he could complete the rollover of Amount 1 from Account Y to an IRA at Financial Institution Q. Taxpayer A asked his wife,     years old, to assist him with communicating with representatives from Financial Institution Q, setting up an IRA, and completing the rollover of Amount 1 from Account Y into that IRA. Taxpayer A asserts that representatives from Financial Institution Q told them that its preferred method of setting up IRAs and completing IRA rollovers was by using the Internet.

On Date 3, Taxpayer A and his wife called Financial Institution Q and asked for help completing the rollover of Amount 1. They worked with Financial Advisor Z on the telephone to use the Internet to set up an IRA at Financial Institution Q and to complete the rollover of Amount 1 from Account Y to the new IRA. Taxpayer A asserts that Financial Advisor Z told them that he could see on his computer screen that they had accessed Account Y and had transferred Amount 1 to an IRA at Financial Institution Q. Taxpayer A represents that he relied on Financial Advisor Z's confirmation that he successfully completed the rollover of Amount 1. Taxpayer A and his wife inadvertently did not select the submit option to complete the transaction. Therefore, instead of establishing an IRA and completing the roll-over as they thought they had done, Taxpayer A did not establish an IRA at Financial Institution Q and Amount 1 remained in Account Y. Taxpayer A represents that he believed that Amount 1 was in an IRA at Financial Institution Q and that he first learned that it instead remained in Account Y months later when his accountant investigated the Form 1099 associated with the distribution of Amount 1 from IRA X.

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.

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 defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) 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) of the Code).

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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:

201206025

(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 submitted by Taxpayer A, including documentation relating to the Internet banking practices of Financial Institution Q, is consistent with the assertion that his inability to complete a timely rollover was due to a misrepresentation made by Financial Advisor Z.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a Rollover IRA . 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 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.

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

If you wish to inquire about this ruling, please contact \*\*\* at \*\*\*-\*\*\*-\*\*\*\*.  
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

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Page 5

201206025

CC: \*\*\*  
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