



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 07 2012

201218025

Uniform Issue List: 408.03-00

T:EP:RA:T1

LEGEND:

Taxpayer A =

Company B =

IRA C =

Account D =

Amount E =

Amount F =

Amount G =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to a letter dated June 13, 2011, as supplemented by correspondence dated November 30 and December 1, 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 were submitted under penalty of perjury in support of your request for a waiver.

Taxpayer A, age 74, represents that on Date 2, a distribution equal to Amount E was made from her IRA, IRA C, and transferred to a non-IRA account, Account D. Taxpayer A asserts that she failed to accomplish a rollover of Amount E

within the 60-day period prescribed by Code section 408(d)(3) because she was misled by her investment advisor into believing that the distribution of Amount E from IRA C would be deposited into another IRA, and an employee of Company B made unauthorized changes to her rollover request.

Initially, Taxpayer had intended to withdraw Amount F from IRA C to make an advance payment for back surgery. Subsequently, she contracted influenza and had to cancel the surgery. At this time, she contacted her investment advisor who urged her to nevertheless file the form requesting a transfer of all of the funds in IRA C to another account, Account D, so that he could invest the funds for her. However, he never explained that Account D was a non-IRA account and urged her to indicate on the form that there would be no income tax withholding, which confirmed her belief that the funds in IRA C were to be transferred to another IRA.

On Date 1, Taxpayer A filed the form requesting a total distribution from IRA C. On the form, she left blank the box for transferring the remaining balance to a non-IRA account and circled "non-IRA Account" with a question mark. She also checked the box for no income tax withholding. After sending in the form, Taxpayer A spoke with an employee of Company B who altered the form during or after their conversation. Taxpayer A did not see the altered form but verbally authorized processing of the form, believing that IRA C would be continued in another IRA. Because she was not provided with a copy of the altered form before she authorized it, she was unable to see that a box was checked directing transfer of the entire balance in IRA C to a non-IRA account, Account D.

On Date 2, a total distribution of Amount E was made from IRA C in a taxable distribution and deposited into Account D. On Date 3, after the expiration of the 60-day rollover period, she met with her accountant, who informed her that a taxable distribution of her entire IRA had been made. From Date 2 to the present, Taxpayer A has made no withdrawals from Account D and has treated it as an IRA. However, Account D has experienced some losses and the current balance in Account D is Amount G.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to Amount E.

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 or 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)(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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (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, 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.

201218025

The information and documentation submitted by Taxpayer A is consistent with her assertion that she intended to roll over Amount E into another IRA but that she was misled by her investment advisor into believing that her funds in IRA C would be transferred to another IRA, and that due to unauthorized changes to her rollover request by an employee at Company B, Amount E was placed in a non-IRA account. Taxpayer A did not discover that her IRA had been discontinued until Date 3, which was after the 60-day period prescribed by section 408(d)(3) of the Code.

Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount E. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E (or portion thereof) into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of Code section 401(a)(9) minimum required distributions.

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 hereto.

This ruling is directed solely 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 the letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you have any questions regarding this ruling, you may contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter

cc: