



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAR 08 2012

201222053

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

SEP IRA B =

Financial Institution C =

Company D =

Amount 1 =

Dear :

This letter is in response to a request for a letter ruling dated August 11, 2011, as supplemented by additional correspondence dated September 13, 2011, and February 23, 2012, from your authorized representative, in which you request 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 represents that he took a distribution from SEP IRA B totaling Amount 1. Taxpayer A, age at the time of the distribution, asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors by Financial Institution C and Company D. Taxpayer A further asserts that Amount 1 has not been used for any other purpose.

Taxpayer A maintained SEP IRA B, a simplified employee pension under section 408(k) of the Code, with Financial Institution C as custodian. In 2009, Taxpayer A informed Financial Institution C that he wished to use Amount 1 from SEP IRA B to invest in Company D. Prior to doing this, Taxpayer A instructed both Financial Institution C and Company D that he desired such investment to remain in a retirement plan. He was told by Financial Institution C that Amount 1 would have to be distributed from SEP IRA B to complete the transaction. The funds would then be rolled into a new IRA from which the investment in Company D could be made. Company D represented to Taxpayer A that the investment could be in the name of a SEP Plan, but mistakenly assumed that Financial Institution C would continue to hold the investment in Company D as part of SEP IRA B. Both Financial Institution C and Company D assured Taxpayer A that the rollover would be, and was, handled properly.

On August 19, 2009, Financial Institution C issued a check for Amount 1, in the name of Taxpayer A/Company D. In consideration of Amount 1, Taxpayer A signed a convertible promissory note with Company D, dated October 19, 2009, issued in the name of SEP IRA B. The promissory note provided that it could be converted into common stock at a later date. Financial Institution C issued a Form 1099-R for the distribution of Amount 1 from SEP IRA B. Taxpayer A reported this as an eligible rollover distribution on his Form 1040 tax return for the taxable year, believing Amount 1 had been properly rolled over to an eligible retirement plan. On April 25, 2011, the Internal Revenue Service informed Taxpayer A that he had underreported his income on his tax return for by Amount 1. Taxpayer A contacted both Financial Institution C and Company D to try to determine why Amount 1 was not rolled over to an eligible retirement plan. Financial Institution C acknowledged in writing that miscommunication between a representative of Financial Institution C and a representative of Company D resulted in the failure to deposit Amount 1 into an eligible retirement plan.

Based on the above facts and representations, you request 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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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) 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 the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to errors by Financial Institution C and Company D.

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 SEP IRA B. Taxpayer A is granted a period of 60 days from the issuance

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of this letter ruling to contribute no more than Amount 1 back into SEP IRA B or another 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, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

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.

A copy of this letter ruling has been 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 (I.D. # ), at ( ) .

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter  
Notice of Intention to Disclose, Notice 437

cc: