



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201230027

T:EP:RA:T2

Uniform Issue List: 408.03-00

XXX
XXX
XXX

MAY 2 2012

Legend:

Taxpayer A	XXX
Roth IRA X	XXX
Account Y	XXX
Amount 1	XXX
Date 1	XXX
Date 2	XXX
Financial Institution A	XXX
Financial Institution B	XXX
Financial Advisor	XXX
Individual H	XXX

Dear XXX:

This letter is in response to your request dated January 30, 2012, and as supplemented by correspondence dated March 17, 2012, 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, age 63, maintained a Roth Individual Retirement Account (IRA), Roth IRA X, held in trust by Financial Institution A. Taxpayer A asserts that on Date 1 she received a distribution of Amount 1 from Roth IRA X. Taxpayer A represents that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code was due to financial institution error. Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer A represents that she took a distribution of Amount 1 on Date 1 from Roth IRA X with the intention of rolling it over into another Roth IRA. On that same day, Taxpayer A applied to open a new Roth IRA at Financial Institution B. Taxpayer A asserts that she told Financial Advisor G, a representative of Financial Institution B, that she wanted to rollover Amount 1 into the newly established Roth IRA. However, Financial Advisor G incorrectly provided Taxpayer A with paperwork to open a non-IRA account. Financial Advisor G then deposited Amount 1 into the non-IRA account, Account Y.

Taxpayer A was unaware of the error until Date 2, when she contacted Financial Institution B to inquire about making a contribution to her Roth IRA. At that time, a representative of Financial Institution B informed her that Account Y was a non-IRA account.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue 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), 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.

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.

Section 408A(c)(6) of the Code provides that no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

Section 408A(e)(1) provides in pertinent part that the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3).

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 Taxpayer A, including a letter from Individual H, an officer of Financial Institution B, stating that the failure of Amount 1 to be rolled over to an IRA within the 60-day rollover period was due solely to an error by Financial Institution B, through its registered representative, is consistent with the assertion of Taxpayer A that her failure to accomplish a timely rollover was caused by an error made by Financial Advisor G, which resulted in Amount 1 being deposited into Account Y, a non-IRA account.

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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 Roth IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount 1, will be considered a rollover contribution within the meaning of section 408(d)(3) 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 taxpayers 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, contact XXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose