



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 26 2012

201242025

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A	=
Individual B	=
IRA Annuity C	=
Financial Institution D	=
Account E	=
Financial Institution F	=
IRA G	=
Financial Institution H	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated July 25, 2011, as supplemented by correspondence dated December 15 and 20, 2011, and July 17, 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, age 68, at the time of the distribution of Amount 1 from IRA Annuity C, asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to her reliance on Financial Institution F to help her complete the rollover. Taxpayer A represents that Amount 1 has not been used for any purpose.

Taxpayer A was married to Individual B. Individual B maintained IRA Annuity C, an individual retirement arrangement (IRA) under section 408 of the Code, with Financial Institution D. Prior to his death on June 24, 2010, after a long illness with cancer, Individual B had handled all financial matters for himself and Taxpayer A. Following her husband's death, Taxpayer A received a distribution in the form of a check, dated July 9, 2010, for Amount 1, representing a death benefit of IRA Annuity C. Taxpayer A represents that she wanted to transfer Amount 1 to her own IRA.

On July 19, 2010, Taxpayer A took the check for Amount 1 to Financial Institution F and asked that it be deposited into an IRA in her name with both her daughters listed as beneficiaries. Taxpayer A did not ascertain whether the rollover to an IRA had occurred. However, it appeared to Taxpayer A from the monthly bank statements she received that an IRA had been opened as instructed because the account was titled in Taxpayer A's name to be held in trust for her two daughters. Being under great stress in the weeks following her husband's death and being unfamiliar in such financial matters, Taxpayer A relied on Financial Institution F to assist her in executing a spousal rollover to an IRA. Taxpayer A represented that an employee of Financial Institution F prepared the necessary paperwork for this transaction. In April of 2011 when Taxpayer A met with her tax preparer, he informed her that Amount 1 had been deposited into Account E, a non-IRA account with Financial Institution F instead of into an IRA. On April 21, 2011, Taxpayer A transferred Amount 1 from Account E to IRA G with Financial Institution H. Associated earnings of Amount 2 were transferred on April 25, 2011, from Account E to IRA G with Financial Institution H.

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 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) of the Code.

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 sections 408(d)(3)(I) and 402(c)(3)(B) 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 her assertion that her failure to accomplish a timely rollover of Amount 1 was due to her reliance on Financial Institution F to complete the rollover.

Therefore, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA Annuity C. Taxpayer A has transferred Amount 1 and the earnings thereon (Amount 2) from non-IRA Account E to IRA G. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to the contribution of Amount 1, then Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. The transfer, however, of Amount 2 (representing earnings on Amount 1) from non-IRA Account E into IRA G is not considered a rollover contribution within the meaning of section 408(d)(3) of the Code, but is an IRA contribution under section 408(a)(1) of the Code, subject to the rules and limits that pertain thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) 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.

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: