



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201246045

AUG 23 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

Individual B =

IRA Annuity C =

Financial Institution D =

Financial Institution E =

Account F =

Financial Institution G =

Financial Institution H =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated May 15, 2011, as supplemented by correspondence dated June 19, 22, 26, 29, July 2, 9 and August 6, 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 she received distributions from IRA Annuity C of Amount 1 and Amount 2 (totaling Amount 3). Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to erroneous advice she received from Financial Institution E. Taxpayer A further represents that Amount 3 has not been used for any purpose.

Taxpayer A maintained IRA Annuity C, an individual retirement arrangement (IRA) under section 408 of the Code, with Financial Institution D that included two single premium deferred annuities. Taxpayer A was married to Individual B. Prior to his death on December 21, 2005, Individual B had handled all financial matters for himself and Taxpayer A. After he passed away, Taxpayer A hired Financial Institution E to assist her with financial planning and investment advice. In early September of 2011, Financial Institution E advised her to liquidate her annuity so that the funds could be deposited in other types of investments. Financial Institution E failed to ascertain what type of annuity Taxpayer had with Financial Institution D. It assumed it was a traditional deferred annuity and not an annuity under either section 403(b) or 408(b) of the Internal Revenue Code.

On September 15, 2011, Taxpayer A received two distributions (totaling Amount 3) from IRA Annuity C and deposited them into Account F with Financial Institution G. On September 29, 2011, Amount 3 was transferred from Account F to an investment account with Financial Institution H. Taxpayer A invested Amount 3 in this manner based on advice she received from Financial Institution E. Financial Institution E has admitted in writing that it erred when it failed to ascertain the source of Amount 3. Had it done this, it would have advised Taxpayer A to deposit Amount 3 into an IRA 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 3.

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).

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 caused by her reliance on erroneous advice she received from Financial Institution E.

201246045

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 3 from IRA Annuity C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 3 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 3 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: