



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201250031

SEP 19 2012

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

Amount A =

Account B =

Account C =

Financial
Institution A =

Financial
Institution B =

Financial
Institution C =

Individual I =

Dear

This is in response to your request dated December 12, 2011, supplemented by correspondence dated April 23, 2012 and May 17, 2012, submitted on your behalf by

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 (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A and Taxpayer B, married and filing a joint income tax return, represent that Taxpayer A received a distribution from IRA X totaling Amount A. Taxpayer A and Taxpayer B state that Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code was due to an error committed by Financial Institution A which led to the placement of Amount A into two separate non-IRA accounts. Taxpayer A and Taxpayer B further assert that Amount A has not been used for any other purpose.

Taxpayer A represents that prior to November 28, 2008, he discussed investing the excess cash in IRA X with his financial advisor, Individual I of Financial Institution A. Individual I informed Taxpayer A that Financial Institution A could not provide an appropriate investment option that would yield a rate of return that was equal to or better than the rates offered by Certificates of Deposit (CDs) at various banking institutions. Individual I further advised Taxpayer A that Taxpayer A should transfer the distribution to his checking account and then purchase the CDs directly from the selected financial institutions. On November 28, 2008, Taxpayer A received a distribution of Amount A in the form of a personal check from Financial Institution A, with the intent to establish rollover IRAs at Financial Institution B and Financial Institution C. That same day, Taxpayer A deposited half of Amount A into Account B at Financial Institution B. On December 1, 2008, Taxpayer A deposited the other half of Amount A into Account C with Financial Institution C. Both accounts were opened jointly in the names of Taxpayer A and Taxpayer B. Taxpayer A and Taxpayer B did not discover that Amount B and Amount C had been deposited into non-IRA accounts until after receiving Form 1099-R from the Internal Revenue Service in February, 2009. On February 12, 2009, and March 4, 2009, Taxpayer A transferred the amounts in Account B and Account C respectively back to IRA X.

An affidavit submitted by Individual I, financial advisor to Taxpayer A and Taxpayer B indicates that Amount A was erroneously deposited into two non-IRA accounts because Individual I failed to adequately advise Taxpayer A regarding the IRA rollover accounts, and to ensure that the funds were actually deposited into rollover IRAs as Taxpayer A had intended.

Based on the facts and representations, you request 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 A.

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)(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 section 408(d)(3)(I), the Internal Revenue Service (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.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amount A from IRA X to another IRA. Taxpayer A has stated that he wished to achieve the highest rate of return in an appropriate investment vehicle and opted to pursue an investment in certificates of deposit at another institution, despite the fact that the assets in IRA X were under professional management at the time. Individual I had no duty to ensure that the rollovers were completed correctly, once the funds were distributed to Taxpayer A. In fact, when Taxpayer A took distribution of Amount A into his personal checking account to self-direct his funds, even though he intended to rollover Amount A into another IRA, he assumed the risk of doing so without benefit of professional advice. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the November 28, 20 distribution to Taxpayer A of Amount A.

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.

A copy of this letter is being sent to your authorized representative in accordance with Form 2848 on file in this office.

If you wish to inquire about this ruling, please contact
at . Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely,



Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: