



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

201310050

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEC 11 2012

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend

Taxpayer A:

Amount M:

IRA A:

Financial Institution F:

Financial Institution E:

Dear

This is in response to your request dated May 10, 2012, as supplemented by correspondence dated October 12, 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 maintained an Individual Retirement Annuity (IRA), IRA A, with Financial Institution F. Taxpayer A asserts that, on November , 20 , he received a distribution of Amount M from IRA A. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Financial Institution E, Taxpayer A's broker and financial advisor, to place the funds in an IRA as instructed by Taxpayer A. Taxpayer A has not used Amount M for any other purpose.

Taxpayer A went to the offices of Financial Institution E in November 20 to discuss moving IRA A from Financial Institution F to Financial Institution E.

Taxpayer A discussed in detail how much money he needed to retire, when he should retire, and how much he needed to add to his retirement accounts. Taxpayer A, aware of the 60-day rollover requirement, chose to move Amount M from IRA A to Financial Institution.

On November , 20 , Taxpayer A received a check for Amount M from IRA A payable to Financial Institution E and brought the check to Financial Institution E with the understanding, based upon Taxpayer A's stated intentions, to open a new IRA rollover account. Instead, Financial Institution E deposited the Amount M check into a non-IRA account single brokerage account and used it to purchase mutual funds. Taxpayer A first became aware of the error when preparing his year 20 taxes. After Taxpayer A contacted Financial Institution E about the mistake, Financial Institution E agreed to assist Taxpayer A in requesting a ruling to resolve the problem.

On March , 20 , Financial Institution E sent an email to Taxpayer A acknowledging that Financial Institution E had failed to place the funds in an IRA.

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 M.

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 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)).

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 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 is consistent with his assertion that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to the failure of Financial Institution E, Taxpayer A's broker and financial advisor, to deposit Amount A into a new IRA.

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 to Taxpayer A of Amount M, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement,

are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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.

If you have any questions, please contact  
SE:T:EP:RA:T:3

Sincerely yours,

A handwritten signature in black ink, reading "Laura B. Warshawsky". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose