



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201314052

Uniform Issue List: 408.03-00

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Legend:

T: EP: RA: T3

Taxpayer A:

Financial Institution C:

Financial Services Firm D:

Financial Advisor T:

Holding B Investment:

IRA X:

Amount M:

Dear

This is in response to your letter dated May 25, 2012, 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 he received a distribution of Amount M from IRA X. Taxpayer A asserts that his failure to accomplish a timely rollover of Amount M was due to errors on the part of Financial Institution C which caused the Holding B Investment purchased by Financial Institution C to be treated as a distribution by Financial Institution C. Taxpayer A represents that Amount M has not been used for any other purpose.

Taxpayer A owned IRA X, which was maintained by Financial Institution C.

In early April 20 , Taxpayer A contacted his financial advisor, Financial Advisor T, regarding an opportunity Taxpayer A had to invest in a private placement investment with the Holding B Investment. Taxpayer A disclosed the details of the proposed Holding B Investment to Financial Advisor T and asked if Taxpayer A's IRA, held with Financial Institution C, could make a direct investment in the Holding B Investment.

Financial Advisor T informed Taxpayer A that it had communicated with Financial Institution C and that the Holding B Investment would be a permissible direct investment by IRA X. Financial Advisor T, with the advice of Financial Institution C, prepared a letter with wire instructions (Wire Letter) addressed to Financial Institution C that explicitly stated that the purchase under consideration was to be coded as a "purchase and securities will be delivered back" to IRA X. This Wire Letter was transmitted by Financial Advisor T to Taxpayer A for signature. Taxpayer A signed and returned the Wire Letter to Financial Advisor T.

At all times Financial Advisor T confirmed that the Holding B Investment was acceptable to Financial Institution C for investment in IRA X. All communications between Taxpayer A and Financial Institution C are handled by Financial Advisor T. Financial Advisor T represented in writing that Financial Institution C approved of the investment by IRA X in the Holding B Investment.

Taxpayer A represents that on April , 20 he requested Financial Institution C to invest Amount M of IRA X in a private placement investment with the Holding B Investment. The Holding B Investment by IRA X was made on April , 20 , when funds were wired from Financial Institution C to the Holding B Investment. No funds from IRA X were ever distributed to Taxpayer A. Upon receipt of the wire transfer, the Holding B Investment reflected the investment as being owned by IRA X. Taxpayer A was told by Financial Advisor T that this transaction was complete and that an interest in the Holding B Investment was owned by IRA X.

In the spring of 20 , Taxpayer A received a Schedule K-1 from Holding B reflecting the income tax results for the tax year 20 . IRA X was reflected as the partner's name on the Holding B Schedule K-1. Also, in the spring of 20 , Taxpayer A received a 1099-R from Financial Institution C which showed a distribution of Amount M from IRA X. Taxpayer A contacted Financial Advisor T regarding the issuance of the 1099-R. Financial Advisor T initially indicated there was a mistake. Taxpayer A eventually learned that Financial Institution C was treating the Holding B Investment as a taxable distribution from IRA X into an investment not owned by IRA X. In a telephone conference with the Financial Institution C Client Advocacy Team, Financial Institution C told Taxpayer A that it was not willing to recognize the Holding B Investment as a qualified IRA investment under the Financial Institution C guidelines.

On April , 20 , Taxpayer A transferred the Holding B Investment to Financial Services Firm D which reviewed all information and concluded the Holding B

Investment was a permissible IRA investment, and Financial Services Firm D was willing to serve as the qualified IRA Custodian of IRA X. On April , 20 , the Holding B Investment office issued an acknowledgement that Financial Services Firm D is custodian of the Holding B Investment.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to the distribution of Amount M from IRA X.

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 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 timely rollover of Amount M was due to errors on the part of Financial Institution C which caused the Holding B Investment purchased by Financial Institution C to be treated as a distribution by Financial Institution C.

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 M from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to the establishment of Financial Services Firm D as custodian of the Holding B Investment, such transaction will be treated as a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

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.

201314052

If you have any questions, please contact
SE:T:EP:RA:T3,

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky", 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