



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201315034

JAN 16 2013

Uniform Issue List: 408.03-00

Legend

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Taxpayer A	=
IRA B	=
Financial Institution C	=
Company D	=
Company E	=
Individual F	=
Amount 1	=

Dear :

This is in response to your request dated May 10, 2012, in which you request, through your authorized representative, 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 represents that he received a distribution equal to Amount 1 from IRA B, which was maintained by Financial Institution C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) was due to erroneous information provided by Individual F, on behalf of Company D, an investment company, as a result of which Taxpayer A believed Amount 1 had been directly transferred to a self-directed IRA.

Company D is an entity, the affiliates of which provide investment services to clients. Company D established Company E, a limited liability company that sells

membership units in an apartment complex to investors. Individual F is the Chief Executive Officer ("CEO") of Company D and the manager of Company E.

In April, 2011, Financial Institution C informed Taxpayer A that it invests IRA assets only in instruments that can be traded on an exchange. Wanting to invest his IRA assets in real estate, Taxpayer A entered into an "LLC Membership Interest Purchase Agreement" ("Agreement") on April 8, 2011, to purchase membership units in Company E from Company D equal to Amount 1. The Agreement was signed by Individual F, on behalf of Company D, and by Taxpayer A, on behalf of his self-directed IRA. An addendum to the Agreement was signed by Taxpayer A, "For His Self-Directed IRA," and the Execution Page lists his "Self-Directed IRA" as the Type of Entity investing in the membership units. On April 19, 2011, pursuant to Taxpayer A's instructions, Financial Institution C directly transferred Amount 1 to Company D by check payable to Company D.

Taxpayer A represents that he believed that, based on discussions with Individual F, he had transferred Amount 1 to a self-directed IRA. Taxpayer A only discovered that Amount 1 was not held in an IRA when he met with his accountant to prepare his 2011 federal Income Tax Return.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B.

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.

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) 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 or 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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).

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) 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 and documentation submitted by Taxpayer A is consistent with his assertion that the failure to accomplish a timely rollover of Amount 1 was due to erroneous information provided by Individual F on behalf of Company D to Taxpayer A, as a result of which Taxpayer A believed Amount 1 had been directly transferred to a self-directed IRA account. 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 1 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a rollover IRA account. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such

contributions, Amount 1 will be considered a rollover contribution within the meaning of 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.

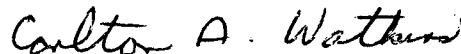
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:  
Notice of Intention to Disclose  
Deleted copy of this letter

cc: