



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201316027

JAN 24 2013

Uniform Issue List: 408.03-00

T:EP:RA:T2

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Legend:

Taxpayer A	= XXXXXXXXXXXXXXXX
IRA B	= XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX
Financial Institution C	= XXXXXXXXXXXXXXXX
Bank D	= XXXXXXXXXXXXXXXX
Account E	= XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX
Amount 1	= XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This letter is in response to your request dated August 11, 2011, as supplemented by correspondence dated June 28, and November 7, 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 (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 from IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to a mistake by Bank D in failing to deposit Amount 1 into a rollover IRA account. Taxpayer A also represents that Amount 1 has not been used for any other purpose and remains in a non IRA account.

Taxpayer A represents that he owned IRA B, which was maintained by Financial Institution C. In the Spring of 2009, Taxpayer A represents that he was losing money in IRA B and wanted a safer place for his retirement funds. On April , 20 , Taxpayer A liquidated IRA B and requested a distribution of Amount 1. On April , 20 , Taxpayer A represents that he went to Bank D for the purpose of doing an IRA rollover, met with a representative of Bank D and requested the same interest rate and CD investment that his wife had completed a month earlier. Instead of providing Taxpayer A with paperwork to open an IRA, the representative of Bank D completed paperwork for a non-IRA CD. Taxpayer A signed the paperwork believing he was opening an IRA but instead opened a non-IRA Account E. The mistake was discovered in 2011 when Taxpayer A received a deficiency notice from the Service.

Based on the facts and representations, a ruling has been requested 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 1.

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.

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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 timely rollover was due to a mistake by Bank D which resulted in Amount 1 being deposited into Account E, a non-IRA account.

Therefore, pursuant to section 408(d)(3)(B) 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 letter ruling to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day rollover requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of any 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.

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If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose