



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201317023

JAN 29 2013

Uniform Issue List: 408.03-00

TIER 1 R.A.T

Legend:

Taxpayer A	=	***
Spouse	=	***
IRA X	=	***
IRA Y	=	***
Financial Institution	=	***
Amount A	=	***

Dear _____

This is in response to your request dated June 1, 2012, as supplemented by correspondence dated August 31, 2012, September 5, 2012, and December 13, 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 represents that she executed a trustee-to-trustee transfer of funds from IRA X directly into IRA Y, but that Amount A was withheld for federal income taxes from the tax-free transfer due to an error committed by Financial Institution. Taxpayer A asserts that her failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) of the Code was due to the error committed by Financial Institution in erroneously withholding Amount A for federal income taxes. Taxpayer A further represents that Amount A has not been used for any other purpose.

Spouse maintained IRA X with Financial Institution. Taxpayer A was the beneficiary of IRA X and was entitled to a distribution of the entire IRA upon Spouse's death. After Spouse's death on August 8, 2011, Taxpayer A sought to execute a tax-free trustee-to-trustee transfer of the entire amount of IRA X into IRA Y, an IRA maintained for her also with Financial Institution. Taxpayer A never intended to receive an actual taxable distribution of funds from IRA X related to the transfer to IRA Y.

At the time of the transfer, Taxpayer A represents that she instructed Financial Institution that she wanted to continue distributing the same amount of taxable required minimum distributions that her husband had previously received from IRA X. She also instructed Financial Institution that she expected her tax rate to continue to be the same as it had been when required minimum distributions were previously distributed from IRA X.

Financial Institution transferred the funds from IRA X to IRA Y on August 20, 2011, in a tax-free trustee-to-trustee transfer. However, Financial Institution misinterpreted Taxpayer's A instructions and withheld Amount A for federal income taxes at the tax rate Taxpayer A had requested for her required minimum distributions, despite the fact that the transfer to IRA Y was not taxable. By the time Taxpayer A discovered the unintended withholding, the 60-day rollover period had expired.

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.

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 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) (related to required minimum distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

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) 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.

Revenue Procedure. 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.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution, and thus does not result in a taxable event for the IRA holder.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by error committed by Financial Institution.

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 A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount A 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.

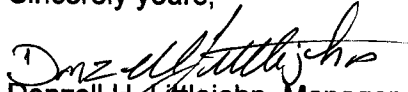
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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 the 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 ***** at (***) ***** . Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***