



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

FEB 06 2013

201318032

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

IRA B =

Financial Institution B =

Financial Advisor C =

Individual D =

Financial Advisor E =

Account F =

Financial Institution G =

Law Firm I =

Company J =

Country K =

IRA L =

Financial Institution M =

Amount 1 =

Amount 2 =

Amount 3 =

201318032

Dear :

This letter is in response to a request for a letter ruling, dated September 29, 2011, submitted on your behalf by 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 ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A received a distribution of Amount 1 from IRA B on June 3, 20 . 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 his reliance on erroneous information provided by Individual D.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, through his investment advisor, Financial Advisor C and custodian, Financial Institution B. Taxpayer A, dissatisfied with the earnings performance of IRA B, began contemplating other investment opportunities. He was referred to Individual D, an investment advisor employed by Financial Advisor E. Taxpayer A intended that his account balance in IRA B would remain invested in one or more qualified retirement plans. On or around June 2, 20 , he met with Individual D. Individual D assured Taxpayer A that a distribution from IRA B could be reinvested without any tax consequences. Individual D did not discuss any rollover deadline that would apply to a distribution from IRA B.

On June 2, 200 , Taxpayer A executed paperwork to wire transfer Amount 1 from IRA B to Account F, a non-IRA Account with Financial Institution G. The funds were transferred to Account F on June 3, 20 . On June 4, 20 , pursuant to Individual D's instructions, and relying on Individual D's written statement that he would take care of the transaction for Taxpayer A, Taxpayer A transferred Amount 2 from Account F to what he believed to be Taxpayer A's SEP-IRA. Instead, the funds were transferred to Law Firm I as the escrow agent. Amount 2 was used to purchase stock in Company J which is an overseas corporation doing business in Country K. Taxpayer A still owns the Company J stock. During the summer of 20 , another employee of Financial Advisor E explained to Taxpayer A that the remainder of Amount 1, Amount 3, would have to be rolled over. Taxpayer A then completed an application to open a new IRA to be maintained with Financial Institution M. On August 4, 20 , Amount 3 was wire transferred from Account F to IRA L, a SEP-IRA account with Financial Institution M. This second transfer of Amount 3 occurred after the expiration of Taxpayer A's rollover deadline. Amount 3 remains in IRA L and has not been used for any purpose.

Taxpayer A further represents and documents that numerous clients of Individual D and Financial Advisor E have initiated both civil and criminal proceedings against them.

Based on the above facts and representations, you request that the Internal Revenue Service ("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) of the Code, 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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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 sections 408(d)(3)(I) and 402(c)(3)(B) 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 presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to his reliance on Individual D and on the misleading and incorrect information regarding the distribution from IRA B, provided by Individual D, which resulted in Taxpayer A's failure to complete a rollover of Amount 1 within the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I), 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 2, or a lesser amount, into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2, or such lesser amount, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. In addition, provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to the contribution of Amount 3 to IRA L on August 4, 2001, such contribution will be considered a 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 408(a)(6) 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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

201318032

If you wish to inquire about this ruling, please contact
(I.D. #), , at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: