



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

201323041

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 11 2013

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

IRA B =

IRA C =

IRA D =

Real Estate =

Amount A =

Amount B =

Amount C =

Individual D =

Company C =

Company E =

Company F =

Company V =

Dear

This is in response to your request dated December 15, 2011, supplemented by letters dated September 4, 2012, September 18, 2012, October 5, 2012, November 1, 2012, and January 29, 2013, 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 represents that she received a distribution from IRA B consisting of Real Estate and Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Individual D's misrepresentations and fraudulent activity with respect to the distributed assets.

Taxpayer A represents that she had a self-directed IRA with Company C which held real estate properties and a money-market account (IRA B). On September 18, 2009, Company C notified Taxpayer A that it would no longer handle self-directed IRAs. On September 29, 2009, Taxpayer A opened a self-directed IRA (IRA C) with Company E and authorized the transfer of the assets in IRA B to IRA C. Individual D was the president of Company E. To effect the transfer, Taxpayer A signed a Company E Transfer Authorization form certifying that she had self-directed real estate within IRA B. Company C's Transfer Authorization also stated that Company E would be the successor custodian. Company E's investment management agreement stated that Company E is a fiduciary as defined in the Employee Retirement Security Act of 1974, and that Company E is registered as an investment advisor under the Investment Advisor Act of 1940.

On January 25, 2010, the Trustee of IRA B transferred the real estate investments to IRA C. In two transactions, on February 2, 2010, and February 9, 2010, the Trustee of IRA B transferred Amount A to Company F owned by IRA C. On April 27, 2010, Taxpayer A moved Amount B out of IRA C with Company E and into IRA D with Company V.

Unbeknownst to Taxpayer A, Individual D engaged in a Ponzi scheme and misrepresented Company E as a fiduciary under the Employee Retirement Security Act of 1974, and the fact that Company E was registered as an investment advisor under the Investment Advisor Act of 1940. In fact, Company E was not a qualified IRA custodian and IRA C was not a qualified IRA. Consequently, the transfers of Real Estate and Amount A from IRA B to IRA C and the transfer of Amount B to IRA D were not rollovers under section 408(d) of the Code.

Taxpayer A intended that the assets transferred from IRA B to IRA C remain in a self-directed IRA with Company E and relied on Company E to act as a custodian for her investment account. Taxpayer A did not learn of Individual D's and Company E's

fraudulent misrepresentations until the publication of the outcome of a federal investigation in 2011.

Based on the facts and representations, you request a ruling 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 Real Estate and Amount A 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 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 60<sup>th</sup> 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 60<sup>th</sup> 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 her assertion that her failure to accomplish a timely rollover was due to Individual D's misrepresentations as to Company E's ability to act as an IRA custodian and his fraudulent activity with respect to the assets she entrusted to him.

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 Real Estate and Amount A from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute the Real Estate and Amount C 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 contributions, the contribution of the Real Estate and Amount C will be considered rollover contributions 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 such contribution, the contribution of Amount B to IRA D on April 27, 2010, will be considered a rollover contribution within the meaning of section 408(d)(3) 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 by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

**201323041**

If you have any questions regarding this letter, please contact  
at . Please address all correspondence  
to SE:T:EP:RA:T3.

Sincerely,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: