



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

201333022

MAY 23 2013

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

T.E.P. 2A.T1

Legend:

Taxpayer A =

IRA B =

Account C =

Financial Advisor D =

Company E =

Financial Institution F =

Financial Institution G =

Form H =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to your request for a letter ruling received in this office on October 3, 2011, submitted on your behalf by your authorized representative, as supplemented by correspondence dated July 17, 2012, and September 24, 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 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 an error committed by his financial advisor.

On August 6, 2011, Taxpayer A withdrew Amount 1 from IRA B, an individual retirement account as defined in section 408(a) of the Code, maintained by Financial Institution F. Taxpayer A withdrew the funds for the purpose of using them as a short term loan to purchase a new residence, intending to roll them back into an IRA account with a different custodian, Financial Institution G, within 60 days. Taxpayer A relied on Financial Advisor D, a registered representative of Company E. Immediately upon receipt of the funds from the sale of his former residence, Taxpayer A, on or about September 20, 2011, mailed a check to Financial Advisor D's office. The check totaled Amount 3 (which was more than Amount 1) and was made payable to Financial Institution G. The funds were to be split into one IRA rollover account and one non-IRA account at Financial Institution G. Taxpayer A intended for Amount 1 to be rolled over into an IRA rollover account at Financial Institution G, with Amount 2 to be deposited into a non-IRA account. Taxpayer A states that Financial Advisor D erroneously prepared a single application, Form H, to set up an account at Financial Institution G when two separate application forms should have been submitted to set up two accounts. Prior to the submission of Form H to Financial Institution G, and within the 60-day period, Taxpayer A received Form H from Financial Advisor D for signature. Relying on Financial Advisor D to have prepared the paperwork correctly, on October 1, 2011, Taxpayer A signed the application and returned Form H to Financial Advisor D. Financial Advisor D mailed Form H and Amount 3 to Financial Institution G. Taxpayer A represents that due to mail delay, the check was received by Financial Advisor D on October 7, 2011 and was overnighted to Financial Institution G. As a result of these events, although Taxpayer A intended to complete a rollover of Amount 1 within 60 days of distribution, Amount 1 and Amount 2 were deposited together into Account C established at Financial Institution G on October 9, 2011, after the expiration of the 60-day rollover period.

Taxpayer A believed that Amount 1 had been properly rolled over into an IRA account within the 60-day rollover period since he had received a Form 1099-R for 2011 but it did not indicate any taxable amount. Taxpayer A did not learn that Amount 1 had not been deposited into an IRA at Financial Institution G until he received a notice to that effect from the Internal Revenue Service (the "Service") in April 2012.

Based on the facts and representations, you request a ruling 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 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.

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.

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

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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 errors committed by Financial Advisor D in preparing and submitting the paperwork and check to Financial Institution G.

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. Provided all requirements of section 408(d)(3) of the Code, other than the 60-day requirement, are met, the contribution of Amount 1 to a rollover IRA will be considered a valid 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 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 ruling 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 (Identification No.) at () . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,


w Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

CC: