



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201333023

MAY 22 2013

Uniform Issue List: 408.03-00

Legend

Taxpayer A:

The IRAs:

Trustee T:

Amount M:

Dear :

This is in response to your request dated August 22, 2012, 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 ("the Code").

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

Taxpayer A maintained five Individual Retirement Accounts (IRAs), The IRAs, with Trustee T. Taxpayer A asserts that, on November 16, 2012, Taxpayer A received a distribution of Amount M. Taxpayer A asserts that her failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to Trustee T's error in advising Taxpayer A to take a second required minimum distribution for year 2012.

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Taxpayer A has not used Amount M for any other purpose.

Taxpayer A has been taking required minimum distributions from the IRAs for several years, during which time she has relied on the IRAs' administrator at Trustee T to inform her of the required amount and prompt her to timely take the distribution. Each year, the IRAs' administrator keeps a list of all his clients who have to take a required minimum distribution, crossing each off of his list when the distribution is completed. In April 20 , Trustee T contacted Taxpayer A and told her that she was required to withdraw approximately Amount M for 20 ("the 20 RMD"). Taxpayer A agreed to take the 20 RMD immediately, and the IRAs' administrator transferred the funds to Taxpayer A's personal investment account. Unfortunately, and contrary to his usual practice, the IRAs' administrator failed to record the distribution and cross Taxpayer A off of his list. As a result, in November, when the IRAs' administrator reviewed his list of clients with outstanding required minimum distributions, Taxpayer A's name was still on his list. Accordingly, he called Taxpayer A and erroneously told her that she was required to withdraw her 20 RMD of Amount M.

Taxpayer A acquiesced and the IRAs' administrator transferred the funds to Taxpayer A's investment account. Because of the Trustee T mistake, Taxpayer A withdrew twice the amount required. On February 27, 20 , the IRAs' administrator's assistant at Trustee T discovered the mistake and informed Taxpayer A. Once Taxpayer A understood that she had taken twice the required amount, she asked that the excess amount be returned to the IRAs. However, Trustee T determined that, because the 60-day period starting with the second distribution of the 20 RMD amount had elapsed, Taxpayer A would need to request a ruling from the Internal Revenue Service ("the Service").

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 M contained in section 408(d)(3) of the Code.

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.

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 rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to Trustee T's error in advising Taxpayer A to take a second required minimum distribution for year 20

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 to Taxpayer A of Amount M, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution,

the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

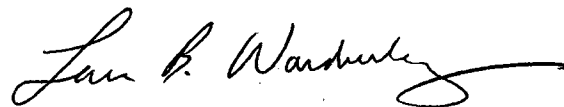
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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.

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Laura B. Warshawsky", with a long, sweeping horizontal line extending to the right.

Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc: