



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

201342015

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUL 24 2013

**Uniform Issue List: 408.03-00**

T:EP:RA:T2

XXX  
XXX  
XXX

Legend:

- Taxpayer A = XXX
- Amount 1 = XXX
- Amount 2 = XXX
- Amount 3 = XXX
- Amount 4 = XXX
- Financial Advisor G = XXX  
XXX
- Accountant H = XXX
- Financial Institution A = XXX
- Financial Institution B = XXX
- IRA P = XXX  
XXX
- Trust X = XXX  
XXX  
XXX

Trust Y = XXX  
XXX  
XXX

Trust Z = XXX  
XXX  
XXX

Dear XXX:

This is in response to your request submitted on your behalf by your authorized representative dated May 31, 2012, as supplemented by correspondence submitted on your behalf by your authorized representative dated August 14, 2012, August 30, 2012, and September 12, 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.

On October 1, 20 , Taxpayer A received a distribution of Amount 1 from IRA P, held by Financial Institution A. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to her reliance on erroneous advice provided by Financial Advisor G of Financial Institution B.

Taxpayer A represents that from the time that she was widowed in May 2000, she largely relied on Financial Advisor G's advice to handle her financial affairs. Taxpayer A represents that her spouse handled all of their financial affairs. Taxpayer A asserts that in 20 , Financial Advisor G suggested that Taxpayer A surrender an annuity held in IRA P. On September 30, 20 , Taxpayer A closed IRA P, held by Financial Institution A, and took a distribution of Amount 1. On October 13, 20 , Taxpayer A deposited Amount 1 into Trust X. On December 7, 20 , Taxpayer A used the proceeds of the distribution of Amount 1 to transfer Amount 2 into Trust Y and Amount 3 into Trust Z. Taxpayer A proceeded to use Amount 1, as distributed in Trust X, Trust Y, and Trust Z, to make investments.

Financial Advisor G provided a statement that she did not realize that IRA P was a qualified account. Accountant H provided a statement that during his preparation of Taxpayer A's income tax return for 20 , he noted that the 20 Form 1099-R issued by Financial Institution A did not indicate a taxable amount for the distribution of Amount

1. Accountant H further represents that he then contacted Taxpayer A to confirm that there was no taxable distribution connected with Amount 1. Accountant H asserts that, at that time, Taxpayer A advised him that the distribution did not result in taxable income because the basis of the annuity distribution was Amount 4, as insured principal. In turn, Accountant H asserts that he based his preparation of Taxpayer A's 2010 income tax returns on this information. Taxpayer A provided a statement that she did not understand the significance of the details of her financial statements and that she relied on Financial Advisor G.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to Amount 1 contained in section 408(d)(3) of the Code in this instance.

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 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, including a statement by Financial Advisor G admitting her error, is consistent with Taxpayer A's assertion that her failure to accomplish a timely rollover of Amount 1 was caused by her reliance on erroneous advice provided by Financial Advisor G, resulting in the failure to deposit Amount 1 into another IRA within 60 days after being distributed from IRA P.

Therefore, pursuant to section 408(d)(3)(A) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 from IRA P. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 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, Amount 1 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 401(a)(9) of the Code.

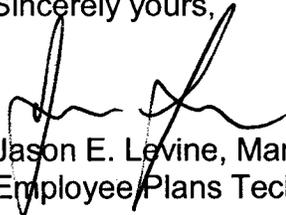
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter 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.

If you wish to inquire about this ruling, please contact XXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: XXX  
XXX  
XXX  
XXX  
XXX

cc: XXX  
XXX  
XXX  
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