



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 23 2013

201342017

Uniform Issue List: 408.03-00

T:EP:RA:T1

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Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
- IRA B = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
- IRA C = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
- Financial Institution D = XXXXXXXXXXXXXXXXXXXX
- Company E = XXXXXXXXXXXXXXXXXXXX
- Financial Institution E = XXXXXXXXXXXXXXXXXXXX
- Company F = XXXXXXXXXXXXXXXXXXXX
- Individual G = XXXXXXXXXXXXXXXXXXXX
- Real Estate = XXXXXXXXXXXXXXXXXXXX
- Amount 1 = XXXXXXXXXXXXXXXXXXXX
- Amount 2 = XXXXXXXXXXXXXXXXXXXX
- Amount 3 = XXXXXXXXXXXXXXXXXXXX
- Amount 4 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This letter is in response to your request for a ruling dated February 23, 2012, as supplemented by correspondence dated October 30, 2012, November 15, 2012, January 4, 2013, March 19, 2013, and April 1, 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 (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, an individual retirement annuity under section 408(b) of the Code, 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 Individual G's misrepresentations and fraudulent activity.

Taxpayer A states that he owned IRA B with Financial Institution D. In 20 , Taxpayer A established a self-directed IRA (IRA C) with Company E. Individual G was the president of Company E. In December 20 , upon receipt of an offer to purchase income producing real property, Taxpayer A terminated IRA B and had the balance in the account (Amount 1) transferred to IRA C maintained with Company E. On March 22, 20 , Individual G organized Company F to be owned by IRA C for the purpose of purchasing and managing the property. Amount 2 was transferred from IRA C to Company F upon its formation. On March 28, 20 , Company F used Amount 3 of the amount received from IRA C and Amount 4, a loan from Financial Institution E, to purchase Real Estate.

Taxpayer A intended that the funds (Amount 1) transferred from IRA B to IRA C were to remain in a qualified IRA and he relied on Company E to act as a "custodian" for his investment account. Taxpayer A did not learn of Individual G and Company E's fraudulent misrepresentations until the publication of the outcome of the federal investigation in 20 .

Unbeknownst to Taxpayer A, Individual G engaged in a Ponzi scheme and misrepresented Company E as a fiduciary under the Employee Retirement Income 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 transfer of funds (Amount 1) from IRA B to IRA C was not a direct rollover but, instead, a taxable distribution under section 408(d)(1) of the Code.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service (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.

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) 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 is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to Individual G's misrepresentations as to Company E's ability to act as an IRA custodian and Individual G's fraudulent activity with respect to the assets that Taxpayer A entrusted to him through Company E and Company F.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute a cash amount of not more than 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 contribution, the contribution will be considered a valid 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 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.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX (Identification No. XXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose