



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201347025

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Uniform Issue List: 408.03-00

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LEGEND:

Taxpayer A

IRA B

Custodian C

Account D

Company E

Amount 1

Amount 2

Dear :

This letter responds to your request for a letter ruling dated October 29, 2012, as supplemented by correspondence dated May 16, 2013, and June 12, 2013, 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").

You submitted the following facts and representations in support of your request under penalties of perjury:

Taxpayer A represents that he received distributions from IRA B of Amount 1 and Amount 2. Taxpayer A asserts that his failure to accomplish rollovers of these distributions within the 60-day period prescribed by section 408(d)(3) was due to an inadvertent deposit of Amount 1 into a non-IRA account and the inaccurate advice that led him unnecessarily to withdraw Amount 1 again from IRA B after having repaid it once.

Taxpayer A owns stock in Company E. Taxpayer A's status as a stockholder in Company E qualified him to participate in a Company E stock purchase program, where he could make purchases of shares of Company E's stock on a monthly basis. Taxpayer A represents that when he filled out the forms to participate in the stock purchase program, he believed that he would be able to use IRA B assets toward purchases without any distributions from IRA B. He represents he had previously made similar investments in stock with IRA B assets, and Custodian C had not treated the purchases as distributions from IRA B. Taxpayer A represents that he never intended for Company E to make a taxable distribution from IRA B to purchase Company E stock, and that he wanted to keep his funds in IRA B.

On June 27, 2011, Company E used Amount 1 to make a stock purchase. Rather than treat the transaction as an ordinary purchase of stock within IRA B, Custodian C listed the transaction as a distribution on Taxpayer A's account statement. Taxpayer A immediately contacted Company E and discontinued participation in the stock purchase program. On July 11, 2011, Company E sent Taxpayer A a check for Amount 2 (Amount 1 plus earnings on the Company E stock). In the process of returning funds to IRA B, Amount 2 was inadvertently transferred to Account D, a non-IRA investment account with Custodian C. The mistake was not discovered until after the expiration of the 60-day rollover period. Taxpayer A represents, however, that Custodian C permitted him to transfer Amount 1 back into IRA B on June 18, 2012.

Soon after, Taxpayer A contacted an Internal Revenue Service ("Service") employee to obtain information about the transaction and whether he should apply for a waiver of the 60-day period. Although he had not submitted a formal request, Taxpayer A represents that the Service employee advised him that he would receive a waiver of the 60-day period. Taxpayer A further represented that the Service employee advised him to take Amount 1 out of IRA B, return it to Account D, and then re-execute the transfer of Amount 1 into IRA B from Account D upon receipt of the waiver.

Taxpayer A represented that, acting on the advice he received from the Service employee, he transferred Amount 1 out of IRA B into Account D on August 2, 2012. He provided a copy of a facsimile sent to the Service employee on August 2, 2012, memorializing the conversation in which the Service employee purportedly advised Taxpayer A to execute the transfer of Amount 1 to Account D. He also provided a copy of an August 29, 2012 facsimile requesting guidance from the Service employee and noting that he was waiting for the Service employee's permission to re-deposit Amount 1 into IRA B. It is unclear how the Service employee responded to these requests. However, Taxpayer A represented that because he followed the Service employee's advice and transferred Amount 1 and did not return it within a 60-day period, the transfer was treated as a distribution from IRA B.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to both distributions 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 received 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 and 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).

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 and document submitted by Taxpayer A is consistent with his assertion that he intended to roll over Amount 1 into IRA B, but that Amount 1 was instead placed into a non-IRA account and that the failure to accomplish a timely rollover of the second distribution of Amount 1 resulted from incorrect advice he received from a Service employee.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement for both distributions of Amount 1 from IRA B. With respect to the first distribution of Amount 1, the contribution of Amount 1 to IRA B on June 18, 2012, will be considered a valid rollover contribution. With respect to the second distribution of Amount 1, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into IRA B. 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 1 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 transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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 wish to inquire about this ruling, please contact (ID Number ) at ( ) . Please address all correspondence to SE:T:EP:RA:T:1.

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose, Notice 437