

201348017



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 05 2013

408.03-00 Rollover Contributions

T: EP: RA: T1

Legend:

Taxpayer A =

Decedent B =

Financial Advisor C =

Financial Institution D =

IRA E =

IRA F =

Financial Institution G =

Account H =

Custodian I =

Amount 1 = \$

Amount 2 = \$

Amount 3 = \$

Dear :

This letter is in response to a request for a letter ruling dated December 10, 2012, as supplemented by correspondence dated May 1, May 30, June 19, and August 12,

2013, in which you request waivers of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A represents that he received a distribution from IRA E, totaling Amount 1, on March 5, 20 , and a distribution from IRA F, as beneficiary to Decedent B's IRA, totaling Amount 2, on February 8, 20 . Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the stressful financial events preceding and following Decedent B's death and his unfamiliarity with financial transactions, which impaired his ability to make timely financial decisions. Taxpayer A further represents that Amount 1 and Amount 2 have not been used for any other purpose.

On August 8, 20 , Taxpayer A and Decedent B, who were both in their eighties, talked with Financial Advisor C at Custodian D about investing in an age-appropriate retirement vehicle. They emphasized to Financial Advisor C that they did not want to be exposed to the risks associated with the stock market. Financial Advisor C persuaded the couple to purchase Individual Retirement Annuity E (IRA E) and Individual Retirement Annuity F (IRA F) with Financial Institution G, after assuring them that it had no connection with the stock market. However, rather than placing the funds in a conservative investment, Financial Advisor C sold the couple high-risk variable annuities, and both IRA E and IRA F collectively suffered substantial losses of more than Amount 3 between the period of August 20 and November 20 .

After Decedent B discovered that Financial Advisor C misrepresented the terms of IRA E and IRA F, she and Taxpayer A instituted a claim against Financial Advisor C with the Financial Industry Regulatory Authority (FINRA), an independent regulator of securities firms and advisors that do business with the public. As part of the claim process, Decedent B and Taxpayer A learned that Financial Advisor C had been accused of a similar misrepresentation of variable annuity terms with another investor, who also filed a FINRA claim against him.

On , while the claim was still open and under investigation with FINRA, Decedent B died. Taxpayer A was left to navigate the outcome of the FINRA claim without his spouse, who had handled all of the couple's financial matters during their marriage. Taxpayer A eventually worked out a settlement with Financial Institution D, whereby it disclaimed any wrongdoing, but agreed to restore the losses to IRA E and IRA F.

As the sole beneficiary to Decedent B's IRA F, Taxpayer A filed a claim for death benefits and received a distribution of Amount 2 on February 8, 20 . After the settlement of the FINRA claim, he also took a distribution of Amount 1 from IRA E on March 5, 20 .

After his experience with Financial Advisor C, Taxpayer A decided to close both IRAs with Financial Institution G, and he represents that he intended to rollover Amount 1 and Amount 2 into another IRA. Taxpayer A represents that at some point during this process, he believed an individual gave him incorrect information about the length of the rollover periods. Taxpayer A relied on numerous individuals, because he was navigating unfamiliar financial matters, including volumes of paperwork, for the first time during the stressful period after his wife's death. Further, Financial Institution G's distribution forms were silent on the length of the rollover period.

Taxpayer A deposited Amount 1 into Account H on February 8, 20 , and Amount 2 into Account H on March 5, 20 , with Custodian I, where they have remained unused. Taxpayer A represents that on May 30, 20 , he attempted to rollover Amount 1 and Amount 2 into an IRA with Custodian I, but a Custodian I employee refused to accept the funds and informed Taxpayer A that the 60-day period had expired.

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 the distributions of Amount 1 from IRA E and Amount 2 from IRA F.

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 presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish timely rollovers of Amount 1 and Amount 2 was due to his unfamiliarity with financial affairs and the personal and emotional stress he experienced following the death of his wife (Decedent B) which led to him to rely on misinformation he received regarding the 60-day rollover period. The rule of section 408(d)(3)(B) of the Code preventing more than one rollover per year does not prevent two rollovers from two separate, unrelated IRAs in the same year.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement for the distributions of Amount 1 from IRA E and Amount 2 from IRA F. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute a sum up to Amount 1 and Amount 2 into an 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 contributions of Amount 1 and Amount 2 will be considered rollover contributions 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:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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