



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201406021

NOV 14 2013

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

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Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXXXXXX
Company C	=	XXXXXXXXXXXXXXXX
Fund D	=	XXXXXXXXXXXXXXXX

Dear XXXXXXX:

This is in response to your request dated August 27, 2012, as supplemented by correspondence dated November 1, 2012, from 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 totaling Amount 1 from IRA X maintained with Financial Institution B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Financial Institution B in failing to deposit Amount 1 into a rollover IRA account. Taxpayer A further represents that Amount 1 has not been used for any

other purpose, except for an amount intended to be equal to a required minimum distribution.

Taxpayer A represents that he maintained IRA X with Financial Institution B. In June, 2008, Taxpayer A consulted Company C with the intent of liquidating the assets held in IRA X and investing the proceeds in Fund D managed by Company C. Taxpayer A represents that his intention was to keep the investment in an IRA.

Taxpayer A established an investment account with Fund D of Company C that provided that the investment was to be held in an IRA; however, Company C believed that Financial Institution B would remain the IRA custodian. Financial Institution B prepared its transfer forms erroneously assuming Company C would become the IRA custodian. Financial Institution B's form required that a transfer of IRA assets be accompanied by a Letter of Acceptance signed by the successor custodian. Financial Institution B transferred Amount 1 from IRA X to Fund D of Company C without securing a properly executed Letter of Acceptance signed by Company C in a capacity as successor custodian. The Letter of Acceptance did not state that the transfer of assets was being received by an IRA custodian. As a result of this mistake, the transfer of Amount 1 from IRA X to Fund D on July 1, 2008, was not a valid custodian-to-custodian transfer and was taxable. The information and documentation submitted supports Taxpayer A's assertion that Financial Institution B made a mistake in failing to deposit Amount 1 in a rollover IRA account.

Taxpayer A did not receive a Form 1099 with respect to the distribution. Taxpayer A discovered that the funds had been erroneously held in a taxable account in January, 2012, when he inquired about required minimum distributions due to attainment of age 70 ½. Taxpayer A represents that he has not withdrawn any part of Amount 1 except for an amount he determined to be equal to the minimum distribution required had the account been maintained as an IRA as intended.

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

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. 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)(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 are consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was caused by a mistake by Financial Institution B.

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 X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter 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 contribution, the contribution of 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.

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

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XXXXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,  
*Carlton A. Watkins*  
Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:  
Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: XXXXXXXXXXXXXXXXXXXX  
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