



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201411047

DEC 16 2013

Uniform Issue List: 408.03-00

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T. EP. RA. T2

Legend:

Taxpayer A	= XXX
Amount 1	= XXX
Accountant F	= XXX
Financial Advisor G	= XXX
Individual H	= XXX
Financial Institution A	= XXX
Financial Institution B	= XXX
IRA P	= XXX
Investment R	= XXX

Dear XXX:

This is in response to your request dated February 7, 2012, 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"). Correspondence on May 21, 2012, June 7, 2012, and June 18, 2012, supplemented the request.

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

Taxpayer A received a distribution of Amount 1 from IRA P on June 15, 2010. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was caused by an error by Financial Institution A through its employees, Financial Advisor G and Individual H. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A owned IRA P, a self-directed IRA held by Financial Institution A. Taxpayer A decided to change the investment of Amount 1 within self-directed IRA P to Investment R. Accountant F, Taxpayer A's accountant, communicated with Financial Institution B about setting up a new self-directed IRA with a rollover contribution of Amount 1, invested in Investment R. Financial Institution B approved the investment in Investment R for a self-directed IRA at Financial Institution B on November 30, 2009.

However, Taxpayer A did not establish a new self-directed IRA at Financial Institution B. Instead, Taxpayer A told Financial Advisor G at Financial Institution A that he wanted to change the investment of Amount 1 within self-directed IRA P to Investment R. Taxpayer A told Financial Advisor G that he intended to maintain Amount 1 within his tax-qualified self-directed IRA P. Financial Advisor G directed Individual H to assist Taxpayer A with the transfer of Amount 1 to Investment R within IRA P. Taxpayer A entrusted the transfer of Amount 1 to Financial Advisor G and Individual H.

Financial Advisor G has acknowledged, in writing, that he understood that it was always Taxpayer A's intention to have Amount 1 remain in a tax-qualified account, but to have it invested in Investment R. Nevertheless, Financial Institution A through its employees, Financial Advisor G and Individual H, treated Taxpayer A's investment of Amount 1 in Investment R as a taxable distribution.

In September 2011, Accountant F, while in the process of preparing Taxpayer A's 2010 tax returns, discovered that Amount 1 was not invested in self-directed IRA P or any other tax-qualified account and was reported by Financial Institution A as a taxable distribution.

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

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 is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was caused by an error by Financial Institution A through its employees, Financial Advisor G

and Individual H, resulting in the failure to deposit Amount 1 into another qualified retirement plan 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. Provided all other requirements of section 408(d)(3) of the Code except the 60-day requirement are met, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling is based on the assumption that IRA P otherwise satisfies the requirements of section 408 of the Code.

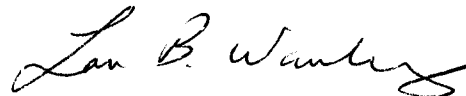
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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.

If you wish to inquire about this ruling, please contact XXX at (XXX) XXX-XXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:

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XXX
XXX