



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

201412020

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 23 2013

Uniform Issue List: 408.03-00

Legend:

Taxpayer = *****

SEP-IRA = *****

Annuity Y = *****

Financial Institution B = *****

Financial Institution C = *****

Amount 1 = *****

Amount 2 = *****

Amount 3 = *****

Amount 4 = *****

Dear *****:

This is in response to your request dated October 4, 2012, as supplemented by correspondence dated January 7, 2013, 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 represents that he received a distribution from SEP-IRA totaling Amount 1. Taxpayer asserts that his failure to accomplish a rollover of Amount 2 into another IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made by Financial Institution C, which set up a nonqualified annuity for Amount 2 contrary to Taxpayer's direction. Taxpayer represents that, except for transfer of Amount 4 which has remained at all times available in his other nonqualified accounts, Amount 2 has not been used for any other purpose.

Taxpayer maintained SEP-IRA, a simplified employee pension under section 408(k) of the Code, with Financial Institution B as custodian. On July 28, 2010, Taxpayer completed an application for a new Roth IRA annuity with Financial Institution C. On August 10, 2010, Taxpayer completed a request for conversion of the entire balance of SEP-IRA to the requested new Roth IRA with Financial Institution C.

Because the transfer of the balance of SEP-IRA had not yet occurred, on September 29, 2010, Taxpayer issued a cashier's check for Amount 3 from his checking account to Financial Institution C for deposit into the new Roth IRA. Financial Institution C deposited the monies, but set up nonqualified Annuity Y rather than an IRA of any type.

On October 1, 2010, Financial Institution B issued a check to Taxpayer for Amount 1 from SEP-IRA. Taxpayer deposited the amount into Taxpayer's checking account. Taxpayer represents that on October 11, 2010, Taxpayer submitted Amount 4 with written instruction to Financial Institution C to change the Roth IRA to a traditional IRA. Financial Institution C deposited Amount 4 into nonqualified Annuity Y, instead of a traditional IRA that Taxpayer requested. Taxpayer's deposits of Amount 3 and Amount 4 with Financial Institution C totaled Amount 2.

Upon receipt of Tax Notice CP2000 dated April 23, 2012, Taxpayer discovered that both deposits were made to a nonqualified annuity rather than an IRA. On April 30, 2012, Taxpayer withdrew Amount 4 from Annuity Y to use in his personal and business accounts; however, he represents that he has kept Amount 4 available in those accounts at all times since its withdrawal from Annuity Y.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2 from SEP-IRA.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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) 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) of the Code).

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) 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) 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.

With respect to Amount 4, the information presented and documentation submitted by Taxpayer are consistent with his assertion that his failure to accomplish a timely rollover of Amount 4 of the Amount 2 waiver request, was caused by Financial Institution C not following the written direction of Taxpayer to deposit Amount 4 into a traditional IRA. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 4 of the October 1, 2010, distribution from SEP-IRA. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 4 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 contribution of Amount 4 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

With respect to Amount 3, Taxpayer has not presented sufficient evidence showing that the September 29, 2010, deposit of Amount 3 to nonqualified Annuity Y, is eligible for a waiver under section 408(d)(3)(I) of the Code. The deposit of Amount 3 from Taxpayer's checking account to nonqualified Annuity Y occurred prior to the October 1, 2010, SEP-IRA distribution. Since no SEP-IRA distribution had been made at the time Amount 3 was contributed, the deposit of Amount 3 to nonqualified Annuity Y does not qualify for a waiver. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day requirement with respect to Amount 3 of Taxpayer's Amount 2 waiver request.

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

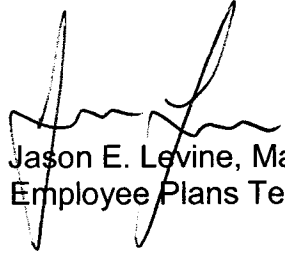
No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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 representatives.

If you wish to inquire about this ruling, please contact ***** at (***) ***-
*****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: *****

