



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201416013

JAN 23 2014

**Uniform Issue List: 408.03-00**

SE:T:EP:RA:T2

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Legend:

Taxpayer	=	***
IRA X	=	***
Financial Institution A	=	***
Financial Institution B	=	***
Amount	=	***
Financial Advisor	=	***

Dear \*\*\*,

This is in response to your request dated September 10, 2012, as supplemented by correspondence received on April 29, 2013, August 9, 2013, October 31, 2013, November 1, 2013, and November 14, 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").

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

Taxpayer represents that she received a distribution from IRA X totaling Amount. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Financial Institution A in instructing her that IRA X was not an IRA.

In 2010, Taxpayer, working with Financial Advisor, sought to move the assets in IRA X from Financial Institution A to Financial Institution B. Taxpayer and Financial Advisor reviewed the account statement for IRA X and there was no indication on the account statement that the account was an IRA. Then, in February 2010, Taxpayer and Financial Advisor called Financial Institution A to confirm the amount in IRA X and that the account was non-qualified. In August 2010, Taxpayer and Financial Advisor called Financial Institution A to confirm the updated amount in IRA and were told again that the account was non-qualified. Financial Advisor has confirmed these conversations. On September 2, 2010, Taxpayer and Financial Advisor, believing that IRA X was a non-qualified account, submitted a withdrawal request for IRA X with Financial Institution A and on the request form, they indicated that the section that was to be completed for a qualified account did not apply. Taxpayer received a distribution of Amount from IRA X on September 4, 2010, and deposited nearly the entire amount with Financial Institution B in a non-qualified account because Taxpayer acted in reliance on the information from Financial Institution that the account was not an IRA. In 2012, Taxpayer received a notice that the September 4, 2010 distribution from IRA X was taxable income.

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.

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) 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) (related to required distributions under section 401(a)(9) of the Code and incidental death benefit requirements of section 401(a) of the Code).

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.

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 is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error committed by Financial Institution A in instructing her that IRA X was not an IRA.

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 from IRA X. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount will be considered a rollover contribution within the meaning of section 408(d)(3).

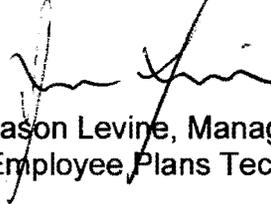
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (regarding required distributions).

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 the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact \*\*\*\*\* at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason Levine, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: \*\*\*