



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201418065

FEB 04 2014

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

LEGEND:

Taxpayer A =

IRA B =

Financial Institution C =

Individual D =

Partnership E =

Entity F =

Administrator G =

Account H =

Amount 1 =

Dear :

This letter is in response to your request for a ruling dated May 30, 2013, 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").

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 from IRA B, totaling Amount 1. 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 due to erroneous and incomplete advice from a financial institution. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A states that he owned IRA B with Financial Institution C. In September 2012 Taxpayer A represents that he was approached by Individual D to invest in Partnership E, a private limited partnership. Individual D is the managing member of Entity F, which is the general partner of Partnership E. Partnership E is not a qualified IRA custodian.

Taxpayer A represents that he expressed an interest in investing IRA B assets in Partnership E to Individual D, provided that Taxpayer A could preserve the tax-deferred status of IRA B funds. In email communication between Taxpayer A and Individual D, Taxpayer A raised whether Partnership E could manage IRA accounts or if Partnership E qualified as an IRA manager. Taxpayer A also indicated in email correspondence to Individual D that Financial Institution C would not host alternative investments outside its network. Individual D indicated to Taxpayer A that he had confirmed with Financial Institution C and Administrator G that Partnership E could manage IRA accounts.

Taxpayer A represents that based on assurances from Individual D and consistent with his separate communications with Financial Institution C he transferred Amount 1 to Account H at Partnership E under the name "Taxpayer A IRA" on September 26, 2012.

Taxpayer A represents that he did not learn that Partnership E was not a qualified IRA custodian until February 2013, after the expiration of the 60-day period, when an accountant for Partnership E requested information regarding the custodian for Account H. Taxpayer A represents that he received a Form 1099-R reporting Amount 1 as a distribution.

Based on the foregoing 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 1 from IRA B.

Section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n) of the Code) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of Code section 408. One of the requirements is that an applicant must assure the uninterrupted performance of its fiduciary duties notwithstanding the death or change of its owners (the ongoing business concept). This precludes an individual from being a trustee or custodian.

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.

In this case, Taxpayer A has not demonstrated that his inability to complete a timely rollover of Amount 1 was caused by any of the factors cited in Revenue Procedure

2003-16. Taxpayer A asserts that he did not receive the correct advice from Financial Institution C, Individual D or Administrator G, which rises to the level of financial institution error. However, the Code imposes no obligation on financial institutions to ensure that a taxpayer properly rolls over distributions to another entity. Financial Institution C had no duty to ensure that Partnership E was an eligible IRA custodian prior to its distribution of Amount 1 to Taxpayer A, and Taxpayer A has not provided evidence that Financial Institution C acted in error.

The information presented indicates that the ability to roll over Amount 1 into an eligible IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A. Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution to Taxpayer A of Amount 1.

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.

A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact _____ (I.D. # _____) by phone at _____ or fax 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 Ruling Letter
Notice of Intention to Disclose

cc: