



201428016

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 16 2014

Uniform Issue List: 408.03-00

SET:EP:RA:T2

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer = XXXXX

IRA = XXXXX
XXXXX

Amount = XXXXX

Financial Institution = XXXXX

Dear XXXXX:

This is in response to your request dated June 20, 2013, submitted on behalf of 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 IRA totaling Amount. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Financial Institution, which failed to carry out his instructions to deposit Amount into an IRA. Taxpayer further represents that Amount has not been used for any other purpose.

Taxpayer represents that on January 19, 2011, he received a distribution of Amount. Taxpayer also represents that he took the distribution based upon the advice of an employee of Financial Institution, who advised him that he would receive a higher interest rate if he rolled over Amount into a different IRA. Pursuant to this advice, and the representation of the employee at Financial Institution that the rollover would not

affect the IRA status of the funds, Taxpayer rolled Amount into another account with Financial Institution, which he believed to be an IRA. It was not until Taxpayer received a notice from the Internal Revenue Service on May 6, 2013, that he realized that Amount had been placed into a non-qualified account, instead of an IRA. Financial Institution acknowledges that its employee may have not understood the transaction in question, and that Taxpayer never intended to move Amount into a non-qualified account.

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.

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) 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code).

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) of the Code do not apply to any amount required to be distributed under section 408(a)(6) 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) 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) 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, including the written acknowledgment by Financial Institution that its employee may not have understood the transaction in question and that Taxpayer did not intend to move Amount into a non-qualified account, is consistent with his assertion that his failure to accomplish a timely rollover was caused by Financial Institution's employee's misunderstanding of the transaction in question.

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. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount into an IRA or other eligible retirement plan. 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 will be considered a rollover contribution within the meaning of section 408(d)(3) 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 representative.

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

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jason E. Levine for".

Jason E. Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: XXXXX
XXXXX
XXXXX