



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201432032

MAY 14 2014

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend

Taxpayer A =

IRA B =

Limited Partnership C =

Financial Institution D =

Financial Institution E =

Firm F =

Firm G =

Financial Advisor H =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to your request dated April 2, 2013, as supplemented by correspondence dated November 21, 2013, March 6, 2014, and April 18, 2014, in which you request, through your authorized representative, 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 equal to Amount 1 from IRA B, which was maintained by Financial Institution D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) was due to incorrect advice from Firm F, Firm G and Financial Advisor H, that Taxpayer A's partnership interest could be titled directly in the name of his IRA.

Taxpayer A is a "Partner" in a limited partnership, Limited Partnership C, as that term is defined in Limited Partnership C's partnership agreement. Taxpayer A wanted to invest the assets of IRA B in Limited Partnership C and sought advice from his financial advisor, Financial Advisor H, a Certified Public Accountant, in July of 2010. Financial Advisor H did not have experience in this type of transaction and consulted with the compliance department of Firm F, a wealth advisory firm, where Financial Advisor H was employed. Financial Advisor H also consulted with Firm G, a national accounting firm affiliated with Firm F, prior to giving advice to Taxpayer A regarding the feasibility of Taxpayer A's proposed IRA investment in Limited Partnership C. Financial Advisor H advised Taxpayer A that, although Financial Institution D would not accept an IRA investment in a limited partnership, Taxpayer A's interest in Limited Partnership C could be titled directly in the name of his IRA.

On July 6, 2010, pursuant to Taxpayer A's request, Amount 1 was distributed from IRA B and transferred to Financial Institution E for the benefit of Limited Partnership C. On July 29, 2010, Taxpayer A completed a Subscription Agreement for the purchase of interests in Limited Partnership C, equal to Amount 2, an amount less than Amount 1, and indicated "IRA" as the form of ownership. Taxpayer A signed the Subscription Agreement using his name in the capacity of "Owner of IRA."

Taxpayer A submitted a letter dated August 3, 2010, from Financial Advisor H. In her letter, Financial Advisor H stated that the Subscription Agreement should identify the IRA as the form of ownership, and that the name on the securities should read "Individual Retirement Account for the Benefit of Taxpayer A." The letter also stated that any distributions from Limited Partnership C should be made payable to his IRA, and could be deposited into IRA B as a "rollover" from Limited Partnership C. Firm G prepared Taxpayer A's 2010 federal Income Tax Return on which it reported distributions from IRAs equal to Amount 3, an amount greater than Amount 1, and identified zero as the taxable amount. The Form 1099-R issued by Financial Institution D indicated that the taxable amount of distribution Amount 1 was unknown, but identified the distribution as an early distribution, with an exception.

In late 2012, Financial Advisor H discovered that merely holding title in the name of the IRA did not meet the requirement that the IRA be maintained by a valid custodian. Financial Advisor H immediately contacted the client to inform him of the mistake and suggested that he seek a waiver of the 60-day requirement from the Service. Taxpayer A submitted a letter dated January 22, 2013, from one of the general partners of Limited Partnership C stating that Taxpayer A's intended IRA has been invested in Limited Partnership C.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the 2010 distribution of Amount 2 from IRA B.

Section 408(a) of the Code defines an IRA to mean a trust created or organized in the United States, and requires that the trustee be a bank or an approved non-bank trustee.

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.

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 or 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 of the Treasury 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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that the Service will issue a ruling waiving the 60-day rollover requirement in cases 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 taxpayer. 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 Service has the authority to waive the 60-day rollover requirement where the individual failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Rev. Proc. 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A chose to use the proceeds from IRA B to fund a business venture rather than attempt to roll the proceeds over into an IRA account for retirement purposes.

Therefore, pursuant to section 408(d)(3)(I) of the Code, Taxpayer A's request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 2 is declined, and total distribution Amount 1 is therefore includible in Taxpayer A's gross income for the 2010 taxable year.

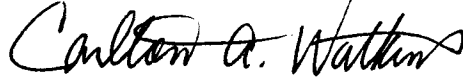
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 a 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
Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
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cc: