



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

201437033

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 19 2014

Uniform Issue List: 408.03-00

Legend:

Taxpayer A	=
Taxpayer B	=
IRA C	=
IRA D	=
Financial Institution E	=
Financial Institution F	=
Receiver G	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated February 9, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A, and Taxpayer A's spouse, Taxpayer B represent that they received distributions from IRA C and IRA D, totaling Amount 1 and Amount 2, respectively. Taxpayer A and Taxpayer B assert that their failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Receiver G of Financial Institution F to identify these amounts as IRA distributions.

Taxpayer A maintained IRA C and Taxpayer B maintained IRA D, individual retirement accounts (IRAs) with Financial Institution E, under section 408(a) of the Code. Taxpayer A and Taxpayer B made both IRA and non-IRA investments in Financial Institution F. In 2009, the Securities and Exchange Commission determined that Financial Institution F was a Ponzi scheme and froze all assets of Financial Institution F. Receiver G was appointed receiver over Financial Institution F.

In 2012, Receiver G of Financial Institution F made several distributions to Taxpayer A and Taxpayer B. The distributions included refunds of IRA money and refunds of non-IRA money. Receiver G failed to identify the distributions as refunds of IRA assets. After the 60-day rollover period, Taxpayer A and Taxpayer B received Forms 1099-R indicating that Amount 1 for Taxpayer A and Amount 2 for Taxpayer B, were IRA distributions.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amount 1 and Amount 2.

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 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 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) 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) 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.

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 the documentation submitted by Taxpayer A and Taxpayer B is consistent with their assertion that their failure to accomplish a timely rollover of Amount 1 and Amount 2 was due to the failure of Receiver G of Financial Institution F to identify the amounts as relating to Taxpayer A's and Taxpayer B's IRAs.

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 1 from IRA C and Amount 2 from IRA D. Taxpayer A and Taxpayer B are granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 and Amount 2 into rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributions will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

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.

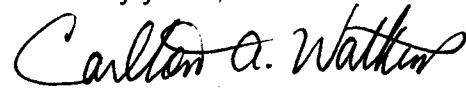
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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.

**201437033**

If you wish to inquire about this ruling, please contact  
(I.D. #           ), SE:T:EP:RA:T1, at

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

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