



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

201438035

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 27 2014

Uniform Issue List: 408.03-00

SE:T:EP:RA:T2

Legend:

Taxpayer:

IRA:

Amount:

Vendor:

Financial Institution:

Agent:

Dear :

This is in response to your letter dated July 25, 2013, submitted on your behalf by your authorized representative, as supplemented by correspondence received on November 2, 2013, May 1, 2014, and May 12, 2014, 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) was due to an error committed by Agent when submitting an online application to Financial Institution, which led to Amount being placed in a Certificate of Deposit, a non-qualified account with

Financial Institution. Taxpayer further represents that Amount has not been used for any other purpose.

Taxpayer represents that he withdrew Amount from IRA, on March 14, 2012, with the intent to rollover funds from IRA to a rollover IRA, maintained by Financial Institution in order to obtain a higher rate of return. On March 20, 2012, Taxpayer visited a branch of Vendor, an agent for Financial Institution. Taxpayer consulted with Agent and requested to establish a rollover IRA CD at Financial Institution to receive Amount from IRA. Agent mistakenly opened a non-IRA account using Financial Institution online account opening application.

On March 23, 2012, Taxpayer mailed Amount to Financial Institution for rollover contribution to the rollover IRA, which he believed he had established. Financial Institution received Amount on March 28, 2012, and deposited Amount into the non-IRA account, erroneously opened by Agent. Subsequently, Financial Institution issued Taxpayer an email confirming the opening of a CD.

Taxpayer received no further correspondence or communication from Agent, Vendor, or Financial Institution regarding the non-IRA account. In January 2013, Taxpayer discovered the error when he received a Form 1099-INT issued by Financial Institution reporting taxable interest income generated by the non-IRA account.

You submitted correspondence dated March 25, 2013, from Financial Institution, and March 12, 2013, from Vendor, which indicate erroneous instructions from Agent to Vendor, including establishing an Non-IRA CD instead of a rollover IRA CD, resulting in the failure of the intended rollover by Taxpayer.

Based on the facts and representations, you request a ruling that the Internal Revenue Service ("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) 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.

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), 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 his assertion that the failure to accomplish a rollover of Amount

within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors committed by Agent and Financial Institution.

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 date of the issuance of this letter ruling to make a rollover contribution of Amount to a rollover IRA. 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 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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

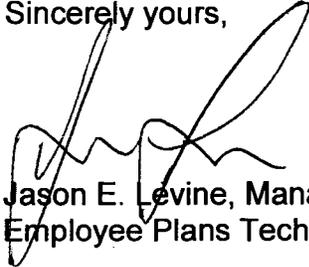
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This 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.

If you have any questions, please contact
correspondence to SE:T:EP:RA:T2.

Please address all

Sincerely yours,



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

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

CC: