



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201443033

JUL 28 2014

Uniform Issue List: 408.03-00

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T.E.P. RA:TI

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

IRA B = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Account C = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Financial Institution D = XXXXXXXXXXXXXXXXXXXX

Individual E = XXXXXXXXXXXXXXXXXXXX

Amount 1 = XXXXXXXXXXXXXXXXXXXX

Amount 2 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This letter is in response to your request for a ruling dated August 28, 2013, as supplemented by correspondence received on February 21, 2014, March 28, 2014, April 16, 2014, and May 16, 2014, 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 she received a distribution from IRA B totaling Amount 1 in 2012. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within

the 60-day period prescribed by section 408(d)(3) was due to misrepresentations and fraudulent activity of Individual E.

Taxpayer A states that she owned IRA B with Financial Institution D. Taxpayer A had her income tax returns prepared by Individual E for over 10 years. Individual E had represented to Taxpayer A that he was an accountant with a Certified Public Accountant certification and a law degree. While preparing Taxpayer A's tax returns, Individual E determined her entire retirement fund was held in IRA B. In 2012, Individual E told Taxpayer A that he had worked out a custom financial plan for her that would require her to take all of her money from IRA B and deposit them in another account, which would be financially more advantageous to her. Based on Individual E's advice, in 2012 Taxpayer A received Amount 1 from IRA B and deposited Amount 1 into Account C, a non-IRA account. Subsequently, Individual E fraudulently induced Taxpayer A to withdraw sums of money from Account C and transfer such to him to be used to pay her tax liability in 2012 and any additional tax liability generated by the new financial plan. Instead, Individual E deposited the money into his personal account and disappeared. Individual E has since been formally indicted on charges of federal mail fraud, wire fraud, and attempting to interfere with administration of internal revenue laws. Taxpayer A has not recovered her loss. Taxpayer A represents that Amount 2 remains in Account C and no other funds have been withdrawn from Account C for any other purpose.

Taxpayer A never intended to make taxable withdrawals from IRA B. The funds (Amount 1) transferred from IRA B to Account C were to remain in a qualified IRA and she relied on Individual E to act as advisor for her investment account. Taxpayer A did not learn of Individual E's fraudulent misrepresentations and activity until she received a Form 1099 in early 2013.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B.

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.

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) 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 A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 2 was due to Individual F's misrepresentations and fraudulent activity with respect to the assets that Taxpayer A entrusted to him.

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 2 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute a cash amount of not more than Amount 2 into 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 valid rollover contribution within the meaning of section 408(d)(3) of the Code.

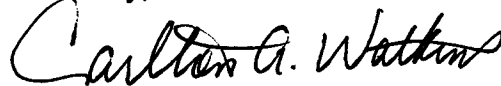
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 representatives pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (Identification No. XXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose