



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

201452024

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 30 2014

SETTLED RATS

U.I.L. 408.03-00

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Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXX
- Individual B = XXXXXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXXXXX
- Company F = XXXXXXXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXXXXXXX
- Credit Union E = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your request dated April 6, 2014, as supplemented by correspondence dated July 23, 2014, and August 28, 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 A represents that he received a distribution from IRA X of Amount D. Taxpayer A 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 the incorrect advice of Individual B.

Taxpayer A maintained IRA X with Company F. Taxpayer A represents that upon the advice of Individual B, he withdrew Amount D on February 28, 2013, from IRA X in order to pay off a home equity loan so that he could be a co-signer on his son's mortgage loan.

Taxpayer A relied upon the advice of Individual B who told Taxpayer A to withdraw funds from IRA X to pay off his home loan equity and after his son's mortgage loan was secured, Taxpayer A should get another home equity loan to deposit the funds back into IRA X during the applicable rollover period. However, Individual B told Taxpayer A the incorrect number of days in the rollover period.

On April 30, 2013, Taxpayer A learned for the first time that Individual B's advice was wrong when he talked with his tax preparer. Upon learning this, Taxpayer A immediately went to Credit Union E and re-established a home equity loan. On May 8, 2013, when funds were available, Taxpayer A deposited Amount D into IRA X.

Based upon the above 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 D.

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 received 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 included 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 occur 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, 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 A is consistent with his assertion that his failure to accomplish a timely rollover was due to the incorrect advice given him by Individual B.

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 D. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, were met with respect to such contribution, the contribution of Amount D into IRA X on May 8, 2013, 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 408(a)(6) of the Code.

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxx, at xxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437