



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201508021

NOV 25 2014

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Taxpayer A =

IRA B =

Financial Institution C =

Bank D =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a letter dated June 27, 2014, as supplemented by correspondence, dated August 27, 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 represents that he received a distribution from IRA B totaling Amount 3. 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 erroneous advice concerning the rollover process provided by a financial advisor with Financial Institution C.

Taxpayer A maintained IRA B with Financial Institution C. On October 23, 2013, Taxpayer A met with a new financial advisor at Bank D to discuss his finances. The financial advisor instructed Taxpayer A that if he wanted to roll over IRA B to Bank D, Bank D would charge Taxpayer A to liquidate the holdings in IRA B. Instead, the financial advisor instructed Taxpayer A to close his account with Financial Institution C.

Relying on this advice, Taxpayer A telephoned his financial advisor with Financial Institution C and instructed him to close IRA B. Taxpayer A represents that he had indicated to the financial advisor that he wished to close the account to complete a rollover. Taxpayer A represents that the financial advisor informed him that due to the nature of the investments, it would take two to three months to complete the transaction. Shortly thereafter, Taxpayer A received a check for Amount 1 dated October 28, 2013. After settlement of investment trades and receipt of interest income and dividends Taxpayer A received 6 checks, totaling Amount 2, the final one on December 30, 2013, after the expiration of the 60-day period. In all, Taxpayer A received a total distribution of Amount 3.

Relying on the advice of the financial advisor with Financial Institution C that it would take two to three months to close IRA B, Taxpayer A held the checks until he received a full distribution of the proceeds of IRA B. Taxpayer A represents that he believed he had enough time to roll the checks into a new account at Bank D, because the checks indicated that they were valid for 180 days. Taxpayer A represents that he met with a representative of Bank D on January 28, 2014, at which time he presented the checks for deposit. Understanding that the 60-day period had passed, the representative immediately contacted Financial Institution C, who agreed to stop payment on the checks. Taxpayer A has provided copies of account statements for IRA B that show stopped payments of the checks effective January 30, 2014, and which show that Financial Institution C has treated Amount 3 as being rolled back into IRA B. Taxpayer A represents that Amount 3 remains in IRA B. Taxpayer A received Form 1099-R indicating that Amount 3 was an IRA distribution, but Financial Institution C has indicated that it will issue a Form 5498 to Taxpayer A for 2014 that will show it treated the credit of Amount 3 as a rollover.

Based upon the foregoing facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA B.

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 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) of the Code).

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.

Revenue Procedure 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 under section 408(d)(3)(I), the IRS 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 or 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 of Amount 3 was caused by his reliance on the erroneous advice he received from his financial advisor at Financial Institution C.

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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 3 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to Amount 3, the stop payment and credit of Amount 3 to IRA B on January 30, 2014, will be considered a valid rollover contribution.

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 letter 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, please contact _____ (I.D. # _____) by phone at _____ or fax at _____. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose