



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201522011

MAR 03 2015

Uniform Issue List: 408.03-00

SEIT: EP: RA: T1

LEGEND:

Taxpayer A =

IRA B =

Financial Institution C =

Account D =

IRA E =

Financial Institution F =

Retirement Plan G =

Account H =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This is in response to your letter dated June 24, 2014, supplemented by
correspondence dated October 14, and December 23, 2014, sent on your behalf by

your authorized representative, in which you request waivers 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 B of Amount 1. Taxpayer A represents that he also received a distribution from IRA E of Amount 2. Taxpayer A asserts that his failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) of the Code was due to his reliance on the mistaken advice of his certified public accountant (CPA), with regard to Amount 1, and an error made by a representative of Financial Institution F, with regard to Amount 2. Taxpayer A maintains that he has not used the amounts for any other purpose.

Taxpayer A opened IRA B with Financial Institution C on October 11, 2011, by transferring Amount 1 from another eligible retirement plan. Although IRA B was opened properly, in the course of preparing his income taxes for 2012, Taxpayer A's CPA mistakenly believed Amount 1 represented contributions to a "new" IRA and not an eligible rollover contribution. His CPA then mistakenly advised Taxpayer A that he was not eligible to make new contributions to an IRA, because he was already participating in a company-sponsored retirement plan and if Amount 1 remained in IRA B, it would be treated as an excess contribution. Acting on his CPA's advice, Taxpayer A transferred Amount 1 to Account D, a non-IRA account with Financial Institution C, on March 1, 2012.

Taxpayer A's CPA provided a signed statement indicating that he has been providing tax advice to Taxpayer A for 20 years and that he advised Taxpayer A to take the distribution from IRA B. Taxpayer A represents that he did not learn of the error until he received a CP2000 notice from the IRS in 2014. Upon learning of the error, Taxpayer A transferred Amount 3 (Amount 1 plus earnings) back to IRA B where it remains.

With regard to Amount 2, Taxpayer A maintained IRA E with Financial Institution F. Financial Institution F is also the custodian for Taxpayer A's employer-sponsored qualified retirement plan, Retirement Plan G. Taxpayer A represents that in March 2012, he directed the representative at Financial Institution F, with whom he regularly worked, to transfer Amount 2 from IRA E to Retirement Plan G, as part of a rollover from one eligible retirement plan to another. However, Taxpayer A represents that the representative failed to follow his direction and instead placed Amount 2 into Account H, a new, taxable account with Financial Institution F, without Taxpayer A's knowledge. Taxpayer A represents that he did not learn of the mistake until receiving a CP2000 in 2014. Upon receipt of the notice, Taxpayer A represents that he transferred Amount 4 (Amount 2 plus earnings) back to IRA E.

Based on the facts and representations, you request a ruling that the Internal Revenue 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 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 1 within the 60-day period was due to his reliance on the erroneous advice of his CPA and, with respect to Amount 2, the failure resulted from an error committed by his financial advisor at Financial Institution F.

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 B and Amount 2 from IRA E. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to the contributions, the contribution of Amount 1 on May 5, 2014, to IRA B will be considered a valid rollover contribution and the contribution of Amount 2 to IRA E on May 14, 2014, will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code. Note, however, that the waivers do not apply to earnings on Amount 1 or Amount 2. Therefore, the transfers of any amounts representing earnings are considered IRA contributions under section 408(a)(1) of the Code subject to the rules and limits that pertain thereto.

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.

A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

201522011

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxx
(I.D. #xxxxxxxxxxxx) at (xxx) xxx-xxxx. Please address all correspondence to
SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: