



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

201547010

AUG 26 2015

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

T. EP. RA: T2

Legend

Taxpayer A =
IRA B =
Partnership C =
Custodian D =
Financial Advisor E =
Financial Institution F =
Amount 1 =
Percentage 2 =

Dear

This is in response to your request dated November 11, 2013, as supplemented by correspondence dated October 3, and November 24, 2014, in which you request, through your authorized representative, 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 B equal to Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the

60-day period prescribed by 408(d)(3)(A) of the Code was due to incorrect advice from Partnership C and Financial Advisor E.

Taxpayer A maintained IRA B with Custodian D. Taxpayer A wanted to purchase a partnership interest equal to Percentage 2 in Partnership C. Financial Advisor E prepared the paperwork for taxpayer A to sign and on November 21, 2012, Custodian D issued a check in Amount 1 payable to Partnership C. Taxpayer A represents that he intended to have IRA B purchase the shares and be held by Custodian D. The partnership agreement of Partnership C indicated that the interest was held by "Taxpayer A IRA". However, Custodian D was unable to hold the partnership interest and as a result, issued a Form 1099-R treating the distribution on November 21, 2012, as a taxable distribution. Taxpayer A represents that Financial Advisor E should have prepared paperwork to transfer Amount 1 to Financial Institution F, who would have held the partnership interest on behalf of Taxpayer A's IRA. The mistake was discovered in October, 2013, during the preparation of Taxpayer A's 2012 tax return.

Based on the above facts and representations, you request a ruling that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code as to the distribution of Amount 1.

Section 408(a) of the Code defines an IRA to mean a trust created or organized in the United States, and requires that the trustee be a bank or an approved non-bank trustee.

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.

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) 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 or 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).

Effective January 1, 2015, all of an individual's IRAs are considered a single IRA for purposes of applying the one rollover per year limitation.

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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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, provides that the Service will issue a ruling waiving the 60-day rollover requirement in cases 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 taxpayer. In determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) 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 Service has the authority to waive the 60-day rollover requirement where the individual failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Rev. Proc. 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A chose to use the proceeds from IRA B to fund a business venture rather than attempt to roll the proceeds over into an IRA account for retirement purposes.

Therefore, pursuant to section 408(d)(3)(l) of the Code, Taxpayer A's request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 is declined, and Amount 1 and any earnings thereon are therefore includible in Taxpayer A's gross income for the 2012 taxable year.

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.

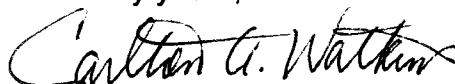
Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you have any questions, please contact

Please address all correspondence to

SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose
Deleted copy of this letter

cc: