



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201611027

DEC 18 2015

Uniform Issue List: 408.03-00

T: EP: RA: T1

Legend:

Taxpayer A =
IRA B =
Company C =
Company D =
Custodian E =
Custodian F =
Asset 1 =
Amount 2 =

Dear :

This is in response to your request for a private letter ruling dated June 18, 2015, as supplemented by correspondence dated July 8, and 9, 2015, from 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 he received a distribution of Asset 1 from IRA B. Taxpayer A asserts that his failure to accomplish a rollover within the

60-day period prescribed by section 408(d)(3) was due to the unexpected and unauthorized distribution of Asset 1 by Company D.

In 2005, Taxpayer A rolled over IRA B with Company C, which subsequently became Company D in 2012. From 2007 to 2012, IRA B was maintained by Custodian E for Company C. IRA B's investments included Asset 1, a promissory note to an unrelated party and a cash account for Amount 2. Asset 1 required no monthly re-payments and had a lump-sum payment due in 2020. Amount 2 was a cash account used for set-up and annual administrative fees of IRA B. In 2007, Taxpayer moved from _____ to _____. Taxpayer A represents that he sent a change of address notice to Company D but received no communications from Company D after his move. Annual administrative fees continued to be deducted from the cash account and by the close of 2011, only a small amount remained in this account.

In 2012, Company C changed its name to Company D. Company D uses Custodian E as the custodian of self-directed IRA custodial accounts that it sponsors, including IRA B. The 2012 annual custodial fee assessed by Company D reduced the balance in the cash account within IRA B to zero. Unbeknown to Taxpayer A, on December 27, 2013, Company D deemed an in-kind distribution of Asset 1 in Taxpayer A's IRA B for failure to pay the annual custodial fee. Taxpayer A was unaware of the distribution until April, 2015, when the Internal Revenue Service sent Form CP 2501 notifying Taxpayer A that he failed to include an amount reported on Form 1099-R on his 2014 Tax Return. Taxpayer A represents that he never received Asset 1 and it is presumed lost. Taxpayer A also represents that a new IRA custodian (Custodian F) has agreed to accept a copy of Asset 1 if a waiver is granted.

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 distribution of Asset 1.

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)(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 are consistent with his assertion that his failure to accomplish a timely rollover of Asset 1 was due to its unexpected distribution from IRA B by Company D.

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 Asset 1 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to complete an in-kind rollover of Asset 1 (promissory note dated February 7, 2005) 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 in-kind rollover, the contribution 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 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 ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), , at () or .

Sincerely yours,

Manager
Employee Plans Technical Group 1

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose

cc: