



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201612017

DEC 21 2015

Uniform Issue List: 408.03-00

Legend

Taxpayer A =

Taxpayer B =

SEP-IRA C =

SEP-IRA D =

Account E =

Account F =

IRA G =

IRA H =

Financial Institution I =

Financial Institution J =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to your request dated May 29, 2015, as supplemented by correspondence dated July 21, 2015, 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 penalties of perjury in support of the ruling requested.

Taxpayer A represents that on May 7, 2014, he received a distribution equal to Amount 1 from SEP-IRA C, which was maintained by Financial Institution I. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code was due to his belief that the distribution was deposited into a tax deferred account and his lack of knowledge of the 60-day rollover requirement.

Taxpayer B, Taxpayer A's spouse, represents that on May 7, 2014, she received a distribution equal to Amount 2 from SEP-IRA D, which was maintained by Financial Institution I. Taxpayer B asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code was due to reliance on her spouse, Taxpayer A, in financial matters.

Taxpayer A and Taxpayer B wanted to transfer their SEP-IRAs to FDIC insured accounts that they believed would better protect their retirement assets. On May 7, 2014, Taxpayer A withdrew Amount 1 from SEP-IRA C, which was wired to Account E, a non-IRA account maintained by Financial Institution J. On the same date, Taxpayer B withdrew Amount 2 from SEP-IRA D, which was wired to Account F, a non-IRA account maintained by Financial Institution J.

From May of 2014 through March of 2015, Taxpayer A withdrew amounts from Account E for Taxpayer A's and Taxpayer B's living expenses, which left Amount 3 in Account E. Taxpayer B did not make any withdrawals from Account F.

While preparing their federal Income Tax Return, Taxpayer A and Taxpayer B discovered that Amount 1 and Amount 2 had been deposited into non-IRA accounts. On April 1, 2015, Taxpayer A transferred Amount 3, i.e., that portion of Amount 1 that Taxpayer A did not need for living expenses, to IRA G. On April 1, 2015, Taxpayer B transferred Amount 2 to IRA H. IRA G and IRA H were maintained by Financial Institution J. Taxpayer A and Taxpayer B paid the taxes owed on the portion of Amount 1 that was withdrawn in 2014 to pay for living expenses.

Based on the above facts and representations, you request the following rulings:

- (1) Taxpayer A requests a waiver of the 60-day rollover requirement with respect to the May 1, 2014 distribution of Amount 3 from SEP-IRA C, and
- (2) Taxpayer B requests a waiver of the 60-day rollover requirement with respect to the May 1, 2014 distribution of Amount 2 from SEP-IRA D.

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 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).

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.

Regarding ruling request number (1), Taxpayer A has not established that he intended to roll over the distribution from SEP-IRA C to another IRA as he used Amount 1 in Account E as a checking account for living expenses. Therefore, pursuant to section 408(d)(3)(I) 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. No portion of Amount 1 can be rolled over and must be included in Taxpayer A's and Taxpayer B's gross income for the taxable year. Thus, the contribution of Amount 3 into IRA G on April 1, 2015, will not be considered a valid rollover under section 408(d)(3)(I).

Regarding ruling request number (2), the information and documentation submitted by Taxpayer B support her assertion that she intended to roll over Amount 2 into an IRA, relied on her spouse in financial matters, and Amount 2 was not used for any other purpose. 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 2. Provided all other requirements of section 408(d)(3), except the 60-day requirement, were met with respect to the contribution of

Amount 2 to IRA H, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3).

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 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 wish to inquire about this ruling, please contact
at . 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: