



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

201615023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 11 2016

U.I.L. 408.03-00

SE: T: EP: RA: T3

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXX

Fund B = XXXXXXXXXXXXXXXX

Company C = XXXXXXXXXXXXXXXX

Company E = XXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is in response to your letter dated February 4, 2015, as supplemented by correspondence dated July 9, 2015, 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 your request.

Taxpayer A received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to postal error by the United States Postal Service.

Taxpayer A maintained IRA X with Company E. As custodian of IRA X, Company E invested IRA X assets in Fund B. Taxpayer A represents that he intended to rollover Amount D from IRA X with Company E into an IRA with Company C because Company C had better investment vehicles offerings than Company E.

Taxpayer A inquired with Company C about the process of moving the funds from IRA X and was told that he should request Company E to resign as the custodian of his IRA X and re-assign assets in IRA X to an IRA with Company C. Taxpayer A was also told that he would need an Account Transfer Form from Company C to make the transfer. Taxpayer A requested Company E to resign as custodian of IRA X and on Date 1, Company C reassigned ownership of the assets in Fund B to Taxpayer A.

Taxpayer A represents that on Date 2, he completed Company C's Account Transfer Form and put it in a sealed envelope and mailed it from his residential mailbox.

On Date 3, Taxpayer A first became aware that Amount D was not transferred to Company C as he requested, when he received an email containing a monthly account statement from Fund B.

On Date 4, Taxpayer A contacted Company C and was told that Company C had never received the Account Transfer Form as of this date. Amount D has not been used for any other purpose and remains in Fund B.

Based on the facts and representations, Taxpayer A requests that the Internal Revenue Service (the Service) waive the 60 day rollover requirement with respect to the distribution of Amount D.

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 received 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 included 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, 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

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time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A does not support the assertion that Taxpayer A's failure to accomplish a timely rollover was due to postal error by the United States Postal Service. Taxpayer A has provided no evidence that supports his assertion of postal error.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

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 that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions regarding this letter, please contact xxxxxxxxxxxxxxxx, xxxxxxxxxxxxxxxx, at xxxxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,

for 
Carolyn E. Zimmerman, Acting Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose