



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JAN 27 2016

201617017

Uniform Issue List: 408.03-00

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Legend

Taxpayer A =

Roth IRA B =

Roth IRA C =

Financial Institution D =

Financial Institution E =

Fund F =

Company G =

Trust Company H =

Trust Company I =

Amount 1 =

Amount 2 =

Amount 3 =

Dear Dr. :

This is in response to your request dated August 28, 2015, revised and restated on December 4, 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 penalty of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution equal to Amount 1 from Roth IRA B, which was maintained by Financial Institution D and Amount 2 from Roth IRA C, which was maintained by Financial Institution E. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) of the Code was due to misleading communications with Company G.

In 2014, Taxpayer A contacted Company G, a capital management company, to inquire about investing her own IRA in Fund F, which is located in the United States. Company G informed Taxpayer A that she could invest her IRA in Fund F and sent her a Subscription Agreement. On September 16, 2014, Taxpayer A completed the Subscription Agreement to purchase shares ("Shares") in Fund F equal to Amount 3 (Amount 1 and Amount 2). Company G assisted Taxpayer A in completing the Subscription Agreement in a manner it believed was appropriate for an investment by an IRA. On the Subscription Agreement, Taxpayer A identified the form of organization of the Subscriber of the Shares as an IRA.

On October 30, 2014, Amount 1 and Amount 2 were wired directly from Roth IRA B and Roth IRA C respectively, to the bank custodian of Fund F's assets, Trust Company H. Monthly financial statements from Company G identified the holder of the Shares as "Taxpayer A Roth IRA." In March of 2015, Company G requested IRA rollover information from Fund F's accounting firm and from Trust Company H. Discussions ensued, which led to the discovery by Company G that Trust Company H was not acting as the IRA custodian for Taxpayer A's investment in Fund F.

Taxpayer A submitted a letter to the Internal Revenue Service from Company G explaining its mistaken assumption that Trust Company H was the custodian for Taxpayer A's IRA, and claiming responsibility for the error. In its letter, Company G stated the IRA investors had no way of knowing their accounts were not maintained by a qualified IRA custodian and has obtained a commitment from a trust company to serve as a custodian. Company G also stated that it will revise its subscription agreements to ensure the error does not recur. Taxpayer A represents that she has not used Amount 3 for any other purpose. Taxpayer A also represents that, if a waiver is granted, she will receive a cash distribution

from Fund F equal to Amount 3 and roll over Amount 3 into an IRA with a valid custodian, Trust Company I.

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 3 and that Taxpayer A be given a period of 60 days from the issuance of the ruling to complete the rollover of Amount 3.

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).

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 information and documentation submitted are consistent with Taxpayer A's assertion that the failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3)(A) of the Code was due to misleading communications with Company G, which has since revised the language in its Subscription Agreement.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution of Amount 3 and Taxpayer A has 60 days from the issuance of this letter ruling to complete the rollover of Amount 3 from Fund F to an IRA. Such rollover can consist only of the cash (or other property) received in the distribution of Amount 1 from Roth IRA B and Amount 2 from Roth IRA C. Any earnings on Amount 3 cannot be rolled over and must be included in Taxpayer A's gross income at the time of the rollover of Amount 3 from Fund F to a Roth IRA.

Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, will be met with respect to the contribution of Amount 1, Amount 1 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.

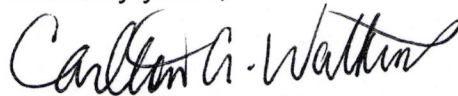
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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: