



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201636050

JUN 08 2016

Uniform Issue List: 408.03-00

SET:EP:RA:T1

Legend

Taxpayer A =

IRA B =

IRA C =

Financial Institution D =

Financial Institution E =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Dear :

This is in response to your request dated September 1, 2015, as supplemented by correspondence received on May 9, 2016, 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 received distributions totaling Amount 5 from IRA C, which was maintained by Financial Institution E. Taxpayer A asserts that the failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code was due to her belief that the purchases made with the distributions were either made within the IRA or rolled over into an IRA within 60 days.

Taxpayer A maintained two IRAs, IRA B with Financial Institution D, and IRA C with Financial Institution E. Taxpayer A wanted to use amounts in IRA B to fund IRA C, which she believed was a self-directed IRA that would allow her to invest in real estate and other alternative investments. Financial Institution E, however, did not offer self-directed IRAs.

On June 30, 2009, Taxpayer A withdrew Amount 6 from IRA B which she rolled over into IRA C. The distribution of Amount 6 from IRA B was evidenced by financial statements from Financial Institution D. The rollover contribution of Amount 6 was evidenced by financial statements from Financial Institution E as well as the rollover contribution form submitted by Taxpayer A to Financial Institution E.

After the rollover of Amount 6, the following distributions from IRA C were made: Amount 1, on July 6, 2009; Amount 2 on August 17, 2009; Amount 3 on August 20, 2009; and Amount 4 on August 8, 2009. Amounts 1, 2, and 3 were distributed from IRA C in the form of checks payable to a title company for the purchase of real estate, which Taxpayer A titled in the name of her IRA. Amount 4 was distributed from IRA C in the form of a check payable to a limited liability company. The distributions were recorded as such by Financial Institution E.

Taxpayer A received a Form 1099-R for the        year that reported Amount 5, an amount equal to the sum of Amounts 1, 2, 3 and 4, as a taxable distribution from IRA C. When Taxpayer A investigated further, she learned that Financial Institution E did not offer a self-directed IRA. Subsequently she liquidated the alternative investments and deposited Amount 5 back into an IRA account. Taxpayer A submitted a letter from Financial Institution E, which was dated August 30, 2011, in which Financial Institution E acknowledged Taxpayer A's intention that the distributions totaling Amount 5 not be taxable but rather tax free rollovers that should have generated a Form 5498 rather than a Form 1099-R.

Based on the above facts and representations, Taxpayer A requests a waiver of the 60-day rollover requirement with respect to the distributions from IRA C totaling Amount 5.

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.

As indicated above, section 408(d)(3)(B) of the Code imposes a 1-year limitation on IRA-to-IRA rollovers. Since IRA C was involved in a rollover, on June 30, 2009, no rollovers could have been made from IRA C for a year.

Taxpayer A argues that she never intended to take a distribution and that if the custodian of IRA C purchased the alternative investments on behalf of IRA C, i.e., if the distributions totaling Amount 5 had not been made, Amount 5 would not be taxable. However, these are not the facts in this case: the distributions totaling Amount 5 were in fact made, and they could not be rolled over to another IRA without violating the one-year limitation, which the Service is not authorized to waive. Alternatively, Taxpayer A argues that amounts 1, 2, 3 and 4 were not distributed out of her IRA because the checks for these amounts were made payable to the title company and limited liability company. In fact, Financial Institution E did not offer self-directed IRAs and the distributions were made to purchase the alternative investments. If there were no distributions, Taxpayer A would not be seeking a waiver.

Accordingly, the Service hereby declines to waive the 60-day rollover requirement with respect to the distributions totaling Amount 5 from IRA C and thus Amount 5 cannot be rolled over into an IRA. Amount 5 must be included in Taxpayer A's gross income for the taxable year, and the contributions totaling Amount 5 into an IRA or IRAs are considered excess contributions under section 4973 of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

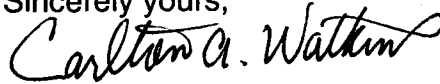
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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  
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Cc: