



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

201637019

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 15 2016

Uniform Issue List: 408.03-00

SE: T: EP: RA: T2

Legend:

- Taxpayer A = ***
- Amount B = ***
- Individual C = ***

- Individual D = ***

- Company E = ***
- Plan F = ***
- Financial Institution G = ***
- Company H = ***
- Fund I = ***
- IRA J = ***

Dear ***:

This is in response to your letter, dated September 3, 2015, as supplemented by correspondence dated January 21, 2016, April 19, 2016, and June 7, 2016, in which your authorized representative, on your behalf, requested a waiver of the 60-day

rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that on September 29, 2014, she received a distribution of Amount B from IRA J. Taxpayer A asserts that her failure to accomplish a rollover within the 60 day period prescribed by section 408(d)(3) was due to an error committed by her financial advisors, Individual C and Individual D, of Company E. Taxpayer A further represents that Amount B has not been used for any other purpose.

Taxpayer A was a participant in Plan F administered by Financial Institution G. On June 18, 2014, Taxpayer A met with her financial advisor, Individual C to discuss financial and estate planning matters pertaining to her then upcoming retirement, which was to occur on July 1, 2014. After the discussion, Taxpayer A decided to transfer the balance of her account in Plan F to an Individual Retirement Account ("IRA") with Company H and invest the assets of the IRA in Fund I. Accordingly, Taxpayer A contacted Financial Institution G and requested a full distribution of her account and a trustee-to-trustee transfer from Plan F to an IRA with Company H.

Financial Institution G refused to do a trustee-to-trustee transfer from Plan F to an IRA with Company H. Instead, they required her to take a distribution of her account from Plan F and rollover the amount to an IRA at Financial Institution G. In turn, she would then transfer the assets of that IRA in a trustee-to-trustee transfer to an IRA at Company H, which would then invest the assets in Fund I. Taxpayer A established IRA J in which she timely deposited the distribution of Amount B from Plan F.

Taxpayer A relied on representatives from Company E, Individual C and Individual D, to facilitate the rollover from IRA J to an IRA with Company H. During August and September 2014, Individual D had email communications with Company H, which is Fund I's third party administrator and custodian, to facilitate an IRA investment in Fund I for the benefit of Taxpayer A. While Company H does provide IRA custodial services, such services are not provided under Fund I's service agreement with Company H, and no paperwork was executed or requested by Individual C or Individual D to establish an IRA account with Company H for the benefit of Taxpayer A.

Taxpayer A completed the required paperwork to invest in Fund I on September 24, 2014, and a wire transfer was made on September 29, 2014 to Fund I. However, due to the errors described above, no IRA account with Company H (or any other custodian) had been established and the investment in Fund I was titled incorrectly in Taxpayer A's own name, rather than an IRA account for Taxpayer A's benefit. This resulted in a taxable distribution from IRA J during the tax year.

Individual C provided an affidavit that Taxpayer A reasonably believed that the transaction had been completed through an IRA rollover and had no reason to suspect

that an administrative error had occurred. Taxpayer A first became aware that no IRA had been established in March 2015, when she received a Form K-1 from Fund I that did not indicate that the investment was held in an IRA account and a Form 1099-R from Financial Institution G indicating a taxable distribution of Amount B. At that time she called Individual C to inform him that a mistake had been made.

Based on the facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount B.

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.

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 is consistent with her assertion that her failure to accomplish a timely rollover was due to an error committed by her financial advisors, Individual C and Individual D, of Company E.

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 B from IRA J. Taxpayer A is granted a period of 60 days from the issuance of this letter to contribute Amount B into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount B 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 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.

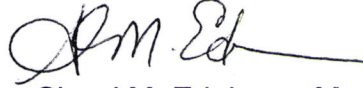
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

201637019

If you wish to inquire about this ruling, please contact *** at ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Sherri M. Edelman, Manager,
Employee Plans Technical Group 2

Enclosures:

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

cc: ***

