



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201737016

JUN 21 2017

SET:EP:RA:T1

Uniform Issue List: 408.03-00

Legend

Taxpayer A =

IRA B =

Account C =

Financial Institution D =

Financial Institution E =

Trust Company F =

Attorney G =

Title Company H =

Amount 1 =

Date 1 =

Dear :

This is in response to your request dated April 12, 2017, 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 the ruling requested.

Taxpayer A represents that she received a distribution equal to Amount 1 from IRA B, which was maintained by Financial Institution D. 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 mishandling of the transaction by her tax advisor, Tax Attorney G.

In 20 , Taxpayer A contacted Attorney G, an attorney who specialized in real estate and tax law, for advice regarding the possibility of investing the assets of IRA B in real estate. Attorney G represented to Taxpayer A that she would help Taxpayer A establish a self-directed IRA to acquire the real estate on behalf of Taxpayer A. Attorney G advised Taxpayer A that the IRA would be established with Trust Company F, which would use Amount 1 to purchase the real estate on behalf of Taxpayer A.

Pursuant to Attorney G's instructions, on September 3, 20 , Amount 1 was wired from IRA B to an account with Financial Institution E that was owned by Attorney G's title company, Title Company H. Attorney G established an account, Account C, with Trust Company F. On September 11, 20 , Attorney G assisted Taxpayer A in purchasing the real estate through Trust Company F. The settlement papers listed the purchaser of the properties as "Trust Company F as Custodian" for the benefit of Taxpayer A. Based on discussions with her attorney, Taxpayer A believed that Account C was a self-directed IRA account. However, Account C was not an IRA account, and Amount 1 had not been deposited into Account C for purposes of purchasing the properties.

On October 10, 20 , Taxpayer A flew out of the country to care for her elderly mother who needed full time care. On February 9, 20 , Taxpayer A's mother passed away. Given Taxpayer A's preoccupation with caring for her mother and her reliance on Attorney G, Taxpayer A was unaware that there was any issue until January 11, 20 , when Trust Company F indicated that Account C did not hold any assets. During the first week of March of 20 , Taxpayer A learned that Attorney G had been arrested and charged with multiple felonies for theft of trust assets. On Date 1, Attorney G's Title Company H was found to be insolvent, and became the subject of state liquidation proceedings.

Taxpayer A represents that Amount 1 was only used for the attempted purpose of establishing a self-directed IRA with the aid and counsel of Attorney G, and has not been used for any other purpose.

Based on the above facts and representations, Taxpayer A requests 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 1 from IRA 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.

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 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 mishandling of the transaction by her tax and real estate advisor, Attorney G.

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 cash equal to Amount 1. Provided all other requirements of section 408(d)(3), except the 60-day requirement, will be met with respect to the contribution of Amount 1 to an IRA, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3). Taxpayer A has 60 days from the issuance of this letter ruling to complete a rollover of an amount, in cash, that is not in excess of Amount 1 into an IRA.

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

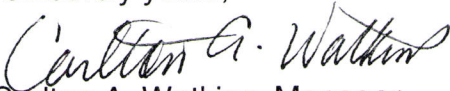
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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: