



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

202023007

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 11 2020

Uniform Issue List: 408.03-00

Legend

Taxpayer A =

IRA B =

IRA C =

Financial Institution D =

Financial Institution E =

Fund F =

State G =

State H =

Amount 1 =

Amount 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This is in response to your request dated November 6, 2019, as supplemented by a letter dated January 24, 2020, 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").

You submitted, under penalties of perjury, the following facts and representations in support of your ruling request.

Taxpayer A represents that on Date 3, he received a distribution equal to Amount 1 from IRA B, which was maintained by Financial Institution D. Taxpayer A asserts that he was unable to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3)(A) of the Code because he failed to receive notification that Financial Institution D resigned as custodian of IRA B.

On Date 1, Taxpayer A invested the assets of IRA B in shares of Fund F, a real estate investment trust. At the time of this investment, Financial Institution D was the custodian of IRA B and Taxpayer A lived in State G. On Date 2, Taxpayer A moved from State G to State H. On Date 3, Financial Institution D sent a letter to Taxpayer A stating that it was resigning as custodian of IRA B. The resignation letter also stated that Financial Institution D assigned the shares in Fund F to Taxpayer A, effective as of Date 3, and that such assignment resulted in a distribution of the assets in IRA B to Taxpayer A. Financial Institution D's resignation letter, however, was sent to Taxpayer A's former address in State G and was not forwarded to his new address in State H. Consequently, Taxpayer A was unaware that Amount 1 was distributed from IRA B until after the expiration of the 60-day period when he received a CP 2000 Notice dated Date 4 from the Internal Revenue Service. On Date 5, after consulting with Fund F, Taxpayer A's accountant, and Financial Institution E, Taxpayer A contributed shares in Fund F equal to Amount 2, an amount greater than Amount 1, to IRA C, which was maintained by Financial Institution E. Taxpayer A represents that Amount 1 has not been used for any other purpose.

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 the shares in Fund F equal to Amount 1 from IRA B.

Section 408(a) of the Code defines an individual retirement account 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 the rollover provisions of section 408(d)(3) do not apply to any amount 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 that was not includible in gross income because of the application of the rollover provisions in 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)(3) 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.

Section 3.02 of Revenue Procedure 2003-16, 2003-4 I.R.B. 359 ("Rev. Proc. 2003-16"), 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.

Section 3.04 of Rev. Proc. 2003-16 provides that the rules regarding the amount of money or other property that can be rolled over into an eligible retirement plan within the 60-day rollover period apply to deposits made pursuant to a waiver of the 60-day rollover period (thus, if a taxpayer received \$6,000 in cash from the taxpayer's IRA, the most that could be deposited into an eligible retirement plan pursuant to a waiver of the 60-day rollover period is \$6,000).

The information and documentation submitted are consistent with Taxpayer A's assertion that he was unable to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3)(A) of the Code because he failed to receive notification that Financial Institution D resigned as custodian of IRA B.

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 shares in Fund F equal to Amount 1 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to the contribution of Amount 1 to IRA C on Date 5, such contribution 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 401(a)(9) 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
Please address all correspondence to
SE:T:EP:RA:T1.

Sincerely,

Adam P. Zaebst, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter

cc: