



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 03 2014

201426033

Uniform Issue List: 408.03-00

LEGEND:

Taxpayer A =

IRA B =

Insurance Company C =

Financial Institution D =

IRA E =

Annuity F =

Insurance Company G =

Amount 1 =

Dear :

This is in response to your ruling request of November 1, 2013, as supplemented by correspondence dated January 30, and February 6, 2014, in which you request 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 she received a distribution equal to Amount 1 from her Individual Retirement Annuity, IRA B, issued by Insurance Company C. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to the mislabeling of IRA B by Financial Institution D, which led to Amount 1 being placed into a non-IRA annuity at Insurance Company G. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that she maintained IRA B, an annuity from Insurance Company C with Financial Institution D. Taxpayer A represents that she received IRA B as part of divorce settlement and she was not aware of the nature of the account when it was transferred to her. The account statements received by Taxpayer A showed IRA B as a "single account" and another IRA, IRA E, as an "Individual Retirement Account."

In 2010, in order to increase earnings on Taxpayer A's investments, Taxpayer A's financial advisors requested a list of Taxpayer A's accounts with Financial Institution D. As indicated, the list showed IRA B as a "single account" and IRA E, as an "Individual Retirement Account." Taxpayer A represents that her financial advisors advised her to transfer both accounts to a new custodian. She represents that her financial advisors completed the paperwork, and Taxpayer A signed the forms to transfer both IRA B and IRA E. Since IRA E was coded as an IRA, it was transferred into an IRA with no difficulty. Since IRA B was not labeled as an IRA, it was transferred into a non-IRA annuity (Annuity F) with Insurance Company G. The ruling request is accompanied by a letter from Taxpayer A's financial advisors indicating they believed IRA B was a non-IRA annuity because of its designation as a "single account" on the list of accounts received from Financial Institution D. The mistake was discovered in 2012 when Taxpayer A received a deficiency notice from the Service.

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 1.

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. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 provides that in determining whether to grant a waiver of the 60-day rollover requirement under 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 or 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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount 1 within the 60-day period was due to the mislabeling of IRA B by Financial Institution D which led Amount 1 to be placed in a non-IRA account at Insurance Company G.

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 1 from IRA B. Taxpayer A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount 1 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 the contribution, the contribution of Amount 1 will be considered a valid 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 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.

If you have any questions, please contact (I.D. #) by
phone at or fax at . Please address all
correspondence to SE:T:EP:RA:T1.

Sincerely yours,

, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose