



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

201446035

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 22 2014

SET: EP: RA: T2

Uniform Issue List: 408.03-00

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer	=	XXXXXX
IRA	=	XXXXXX XXXXXX XXXXXX
Financial Institution A	=	XXXXXX
Financial Institution B	=	XXXXXX
Property	=	XXXXXX

Dear XXXXX:

This is in response to your letter dated August 21, 2013, as supplemented by correspondence dated February 7, 2014, February 17, 2014, March 18, 2014, April 4, 2014 and April 8, 2014 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 represents that Property was distributed from IRA. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an unrequested IRA distribution caused by his failure to provide a required annual valuation of

Property, and that he received notice of the unrequested distribution after the 60-day period expired.

Taxpayer represents that in 2005, he established IRA with Financial Institution A. Taxpayer also represents that IRA established a single member, which in turn invested in Property. In 2011, Taxpayer received a notice CP2000 indicating a tax liability arising from Property because it was distributed from IRA in 2009. Taxpayer claims that he had no prior knowledge of the distribution of Property.

Taxpayer contacted Financial Institution A to inquire about the distribution of Property, upon which time he discovered that Financial Institution A was sold to Financial Institution B. A representative from Financial Institution B informed Taxpayer that Property was distributed because Taxpayer failed to provide Financial Institution B with an annual market valuation as was required to maintain an IRA. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the fact that he did not receive notice that Property was distributed until after the 60-day rollover period expired.

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 Property from IRA.

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 defines, and 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 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) (related to required minimum distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

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) 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 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 Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Rev. Proc. 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. Taxpayer has acknowledged that he failed to comply with Financial Institution B's annual valuation requirement, resulting in the distribution of Property from IRA. In addition, Taxpayer has not provided sufficient evidence establishing Property was held in an IRA and precisely when Property was distributed from IRA. Taxpayer has also not provided sufficient evidence that any of the factors enumerated in Rev. Proc. 2003-16 prevented him from timely completing the rollover.

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Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Property from IRA.

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 the 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 XXXXX at XXXXXXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Jason E. Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: XXXXX
XXXXX
XXXXX