



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

201432030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 13 2014

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

IRA B =

Roth IRA C =

Financial Institution D =

IRA E =

Roth IRA F =

Financial Institution G =

Amount 1 =

Amount 2 =

Dear :

This is in response to your request for a ruling dated August 20, 2013, as supplemented by correspondence dated October 1, 2013, and January 20, and February 23, 2014, from your authorized representative, 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 distributions from IRA B and Roth IRA C totaling Amount 1 and Amount 2, respectively. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 and Amount 2 within the 60-day period prescribed by Code section 408(d)(3) was due a failure by her financial advisor to explain the 60-day rollover rule. Taxpayer A further represents that Amount 1 and Amount 2 have not been used for any purpose.

On September 10, 2012, Taxpayer A completed the appropriate withdrawal instructions forms requesting distributions from IRA B and Roth IRA C. IRA B was a traditional IRA and Roth IRA C was a Roth IRA under sections 408(a) and 408A of the Code, respectively. Both IRAs were maintained with Financial Institution D. After correcting some clerical errors on the withdrawal forms, Financial Institution D, on September 22, 2012, distributed Amount 1 and Amount 2 from IRA B and Roth IRA C, respectively. The distributions were deposited into like accounts (IRA E and Roth IRA F) with Financial Institution G on January 9, and 14, respectively, after the 60-day period expired.

Taxpayer A states that Financial Institution D was her financial advisor. Based on her understanding of her relationship with Financial Institution D, she relied on them to provide guidance regarding the rules associated with her IRA investments, specifically the 60-day rollover period. However, Taxpayer A provided no documented evidence that Financial Institution D was her financial advisor.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amount 1 and Amount 2.

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) of the Code.

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 Service has the authority to waive the 60-day rollover requirement for a distribution from a qualified retirement plan where the individual failed to complete a rollover to another qualified plan or IRA within the 60-day rollover

period but was prevented from doing so because of one of the factors enumerated above in Revenue Procedure 2003-16. In this instance, however, the Service finds that the documentation and materials provided by Taxpayer A do not demonstrate how any of these factors resulted in her failure to accomplish a timely rollover of Amount 1 and Amount 2. Taxpayer A represented that her inability to complete a rollover of Amount 1 and Amount 2 was caused by Financial Institution D's failure to explain the 60-day rollover rule with respect to the distributions of these amounts. However, the Code imposes no such obligation on IRA custodians. Absent actions on the part of a financial institution undertaking such an obligation we do not recognize this failure as financial institution error.


Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distributions of Amount 1 and Amount 2 from IRA B and Roth IRA C, respectively. The deposits of Amount 1 into IRA E on January 9, 2014, and Amount 2 into Roth IRA F on January 14, 2014, are not valid rollovers within the meaning of Section 408(d)(3) 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. If you wish to inquire about this ruling, please contact (I.D. #), at () .

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: