



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201440028

JUL 09 2014

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A =

IRA X =

Financial Institution B =

Amount 1 =

Amount 2 =

Entity C =

Account Y =

Dear :

This is in response to your request dated March 21, 2014, as supplemented by correspondence faxed on March 31, May 19 and June 9, 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 penalties of perjury in support of the ruling requested.

Taxpayer A represents that he received two distributions, Amount 1 and Amount 2, from IRA X in 2011. Taxpayer A asserts that his failure to accomplish a rollover of these amounts within the 60-day period prescribed by section 408(d)(3) of the Code was due to mistakes made by Entity C in representing that it was a financial institution that could serve as an IRA custodian and in representing that it was accepting assets in an IRA-to-IRA transfer. Taxpayer A asserts that these mistakes led to Amount 1 and Amount 2 being deposited in a non-IRA account with Entity C. Taxpayer A seeks a waiver of the 60-day period with respect to Amount 1, Amount 2, and earnings on those amounts.

Taxpayer A maintained IRA X at Financial Institution B. Taxpayer A wished to invest a portion of the assets of IRA X with Entity C as part of his financial plan. Entity C erroneously represented that it was a financial institution qualified to serve as an IRA custodian. On March 28, 2011, Taxpayer A authorized the transfer of Amount 1 in a direct transfer from IRA X to what Taxpayer A thought was another IRA, Account Y invested in Entity C. Entity C signed transfer documentation stating that the transfer was an IRA-to-IRA transfer. Entity C agreed in writing to serve as custodian for the IRA and accept the transferred amount. Entity C issued monthly statements in the name of "Taxpayer A – Rollover IRA."

On September 28, 2011, Taxpayer A and Entity C completed similar paperwork and transferred an additional amount of Amount 2 from IRA X to Account Y.

During a subsequent self-audit, Entity C discovered that it had erroneously represented that it was qualified to serve as an IRA custodian and that Account Y was a non-IRA account. Taxpayer A represents that he has not withdrawn Amount 1 or Amount 2 from Entity C or used the amounts for any other purpose.

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 distribution of Amount 1 and Amount 2 from IRA X, and with respect to subsequent earnings on those amounts.

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) 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 60<sup>th</sup> 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 60<sup>th</sup> 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) of the Code.

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) of the Code.

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) 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.

Taxpayer A asserts that Entity C erred in asserting that it was qualified to serve as an IRA custodian and in accepting transferred Amount 1 and Amount 2 as IRA-to-IRA transfers, and seeks a waiver with respect to such amounts plus earnings.

With respect to Amount 1, the information presented and documentation submitted by Taxpayer A are consistent with his assertion that his failure to accomplish a timely rollover was due to Entity C's error in asserting that it was an IRA custodian and accepting transfer of Amount 1 from IRA X to Account Y as an IRA-to-IRA transfer. 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 X. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to the contribution of Amount 1 to a rollover IRA, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

However, due to the 1-rollover per year rule, section 408(d)(3) of the Code does not provide relief for Amount 2. We have ruled above that Amount 1 may be rolled over. Amount 1 was received by Taxpayer A from IRA X on March 28, 2011, which is during the 1-year period ending on the day of receipt of Amount 2 from IRA X (September 29, 2010 - September 28, 2011). Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA X.

Section 408(d)(3)(I) of the Code provides for waivers only with respect to distributions and not with respect to earnings on such amounts after distribution. Therefore, the Service declines to waive the 60-day rollover requirement with respect to the earnings on distribution of Amount 1 or Amount 2 from IRA X.

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 in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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 is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact  
(ID ) at ( ) - . Please address all correspondence  
to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: