



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201532039

MAY 12 2015

Uniform Issue List: 408.03-00

SET:EP:RA:T1

Legend:

Taxpayer A =

IRA B =

Bank C =

Account D =

Individual E =

Amount 1 =

Amount 2 =

Dear :

This is in response to your request for a ruling dated August 31, 2014, as supplemented by correspondence dated November 24, 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 A represents that she received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by Code section 408(d)(3) was due to her confusion concerning her financial accounts and the 60-day rollover rule.

Taxpayer A maintained IRA B at Bank C. On March 4, 2013, Taxpayer A completed the appropriate withdrawal instructions form requesting a distribution of Amount 1 from IRA B. Taxpayer A immediately deposited Amount 1 into her traditional savings account with Bank C. On March 7, 2013, Taxpayer A withdrew Amount 2 from her savings account and paid off the mortgage on her house. In April, 2014, Taxpayer A's son discovered the withdraw from IRA B and represents that Taxpayer A must have been confused since she already had sufficient funds in her savings account to pay off the mortgage.

Taxpayer A represents that Individual E of Bank C was her financial advisor. Based on her understanding of her relationship with Individual E, she relied on her to provide guidance regarding the rules associated with her IRA investments, specifically the 60-day rollover period. However, Individual E was on vacation at the time Taxpayer A withdrew Amount 1 from IRA B. While Individual E felt the withdrawal of Amount 1 from IRA B was unnecessary, Taxpayer A provided no documented evidence that Individual E owed a duty to advise her of the tax consequences of this transaction. In addition, Taxpayer A provided no documentation from her physicians that she suffers from a declining mental state.

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.

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 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 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. Taxpayer A represented that her inability to complete a rollover of Amount 1 was caused by her confusion over the need of the IRA funds to pay off her mortgage and the absence of Individual E on the date of the transaction. However, no documentation was provided that demonstrates Taxpayer A suffers from any mental impairment which prevented her from understanding the nature of the distribution and the need of the funds to complete a payoff of her mortgage.

Therefore, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B.

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 wish to inquire about this ruling, please contact (I.D. #),
, at () .

Sincerely yours,

Carlta A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437