

LTR 201013073, January 08, 2010

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Uniform Issue List No. 0408.03-00

[Code Sec. 408]

Individual retirement accounts; Rollover contributions.

This is in response to your request dated *****, as supplemented by correspondence dated *****, 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, age *****, represents that he received a Form 1099 representing a distribution from IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to a mistake by Financial Institution D which resulted in a distribution from IRA B without his knowledge or consent. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code. IRA B was held with Financial Institution C and Financial Institution D served as the custodian. Financial Institution E is the successor institution to Financial Institution D. On *****, Taxpayer A received a Form 1099-R from Financial Institution E showing a gross distribution of Amount 1 from IRA B. Taxpayer A contacted Financial Institution E which served as the accounts custodian on behalf of Financial Institution C to inquire about the distribution. Taxpayer A was told that letters were sent out by Financial Institution D requiring a response from the account holder in order to maintain IRA B as a qualified IRA account with Financial Institution E. Taxpayer A asserts that he never received this letter. Because Taxpayer A did not respond to the letter from Financial Institution D, Amount 1 from IRA B (representing the entire account balance) was transferred into Account F (a non qualified account) with Financial Institution C. Taxpayer A asserts that Amount 1 was transferred from IRA B to Account F without his knowledge or consent and therefore he could not have completed a rollover within the 60-day period. Taxpayer A requested that the various financial institutions provide Certified Mail Receipts for the above letters and was told that no such receipts exist.

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 Amount 1 in this instance.

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 information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by a mistake by Financial Institution C which resulted in a distribution from IRA B without Taxpayer A's knowledge or consent.

Therefore, pursuant to section 408(d)(3) 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 issuance of this ruling letter to contribute Amount 1 into a Rollover IRA, or other qualified retirement plan. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, such contribution will be considered a 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.

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 ***** (Identification Number *****) at (*****) *****_*****. Please address all correspondence to *****.

Sincerely yours, Carlton A. Watkins, Manager, Employee Plans Technical Group 1.