



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

201230028

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

T:EP:RA:T2

XXX  
XXX  
XXX

MAY 3 2012

Legend:

Taxpayer A	XXX
Taxpayer B	XXX
Amount 1	XXX
Amount 2	XXX
Date 1	XXX
Date 2	XXX
Date 3	XXX
Financial Advisor G	XXX
Financial Institution A	XXX
Financial Institution B	XXX
Financial Institution C	XXX
Financial Institution D	XXX
Fund Z	XXX
IRA P	XXX

XXX  
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**201230028**

IRA Q	XXX XXX
IRA R	XXX XXX
IRA S	XXX XXX
IRA T	XXX XXX
IRA U	XXX XXX
Account X	XXX

Dear XXX:

This is in response to your request submitted on your behalf by your authorized representative dated February 1, 2011, as supplemented by correspondence dated December 6, 2011, and January 12, 2012, 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 56, received a distribution of Amount 1 from IRA P on Date 1. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to his reliance on erroneous advice provided by Financial Advisor G. Taxpayer A further represents that Amount 1 has not been used for any other purpose. Taxpayer B, age 63, received a distribution of Amount 2 from IRA Q on Date 1. Taxpayer B asserts that her failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) of the Code was due to her reliance on erroneous advice provided by Financial Advisor G. Taxpayer B further represents that Amount 2 has not been used for any other purpose.

Taxpayer A decided to change his investment in IRA P. Similarly, Taxpayer B decided to change her investment in IRA Q. Financial Advisor G presented a loan investment opportunity to Taxpayer A and Taxpayer B. On Date 1, Taxpayer A moved Amount 1 out of IRA P at Financial Institution A in order to take advantage of this loan investment

opportunity through self-directed IRA R at Financial Institution B. On Date 1, Taxpayer B moved Amount 2 out of IRA Q at Financial Institution A in order to take advantage of this loan investment opportunity through self-directed IRA S at Financial Institution B. Taxpayer A entrusted the transfer of Amount 1 to Financial Advisor G. Taxpayer B entrusted the transfer of Amount 2 to Financial Advisor G.

Instead of depositing Amount 1 into IRA R, then investing in the loan investment opportunity with Fund Z, Financial Advisor G and a representative of Fund Z deposited the distributed assets of IRA P directly into Fund Z's Account X, a non-IRA account, with Financial Institution C. Similarly, instead of depositing Amount 2 into IRA S, then investing in the loan investment opportunity with Fund Z, Financial Advisor G and a representative of Fund Z deposited the distributed assets of IRA Q directly into Fund Z's Account X. Then Financial Representative G and the representative of Fund Z used the deposited amounts in Account X to purchase investment notes from Fund Z directly.

Self-directed IRA R would not accept the investment notes of Fund Z. Financial Institution B required that any assets within self-directed IRA R be purchased with funds already within IRA R. Similarly, self-directed IRA S would not accept the investment notes from Fund Z. Financial Institution B required that any assets within self-directed IRA S be purchased with fund already within IRA S.

By the time Financial Advisor G realized his error, the 60-day period to complete the tax-free rollovers had expired. Financial Advisor G's erroneous advice resulted in Taxpayer A failing to deposit the distributed Amount 1 into IRA R within 60 days of the distribution from IRA P. Financial Advisor G's erroneous advice also resulted in Taxpayer B failing to deposit the distributed Amount 2 into IRA S within 60 days of the distribution from IRA Q.

Financial Advisor G acknowledged, in writing, that he provided erroneous advice because he misunderstood the procedures for acquiring the investment notes of Fund Z and placing them within a self-directed IRA.

Upon discovery that Amount 2 was not invested in IRA S, Taxpayer B arranged to deposit Amount 2 into self-directed IRA U at Financial Institution D. On Date 2, Taxpayer B deposited Amount 2 into IRA U at Financial Institution D.

Upon discovery that Amount 1 was not invested in IRA R, Taxpayer A arranged to deposit Amount 1 into self-directed IRA T at Financial Institution D. On Date 3, Taxpayer A deposited Amount 1 into IRA T at Financial Institution D.

Based on the above 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 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)(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.

Revenue Procedure 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.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was caused by his reliance on erroneous advice provided by Financial Advisor G, resulting in his failure to deposit Amount 1 into IRA R within 60 days of being distributed from IRA P.

The information presented and documentation submitted by Taxpayer B is consistent with her assertion that her failure to accomplish a timely rollover of Amount 2 was caused by her reliance on erroneous advice provided by Financial Advisor G, resulting in her failure to deposit Amount 2 into IRA S within 60 days of being distributed from IRA Q.

Therefore, pursuant to section 408(d)(3)(A) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA P. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to the contribution of Amount 1, into IRA T, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In addition, pursuant to section 408(d)(3)(A) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA Q. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to the contribution of Amount 2, into IRA U, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions 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 taxpayers 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 XXX at (XXX) XXX XXXX.  
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:  
Deleted copy of ruling letter  
Notice of Intention to Disclose

CC:  
XXX  
XXX  
XXX