202032010

Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans

May 13, 2020

Uniform Issue List: 408.03-00

Legend

Taxpayer A =

Decedent B =

IRA C =

IRA D =

Financial Institution E =

Financial Advisor F =

Financial Institution G =

Amount 1 =

Amount 2 =

Amount 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear:

This is in response to your request dated October 31, 2019, as supplemented by a letter dated March 20, 2020, submitted on your behalf by your authorized representative, in which you request waivers of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

You submitted, under penalties of perjury, the following facts and representations in support of your ruling request.

Taxpayer A represents that on Date 2, Decedent B, prior to her death, received a distribution equal to Amount 1 from IRA C, a traditional IRA under section 408(a) of the Code. Taxpayer A asserts that Decedent B was unable to accomplish the rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) because of errors made by Financial Advisor F with Financial Institution E and Financial Institution G, which led to the investment of Amount 1 in a non-IRA account.

Taxpayer A also represents that on Date 4, Taxpayer A received a distribution equal to Amount 2 from IRA D. Taxpayer A asserts that he was unable to accomplish the rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) because of errors made by Financial Advisor F with Financial Institution E and Financial Institution G, which led to the investment of Amount 2 in a non-IRA account.

Financial Institution E maintained IRA C and IRA D. Taxpayer A was married to Decedent B and was the sole designated beneficiary of IRA C. After Decedent B's death, Taxpayer A assumed ownership of IRA C with the establishment of IRA D.

On Date 1, prior to her death, Decedent B worked with Financial Advisor F and Financial Institution G in rolling over a distribution from her 401(k) plan to IRA C. Subsequently, Decedent B wanted to roll over Amount 1 from IRA C into a self-directed IRA maintained by Financial Institution G that would invest in a real estate partnership. Working with Financial Institution G and relying on the advice of Financial Advisor F, on Date 2 Decedent B took a distribution from IRA C equal to Amount 1 for purposes of rolling it over to an IRA with Financial Institution G. Based on the assurances of Financial Advisor F, Decedent B and Taxpayer A believed that Amount 1 had been rolled over into an IRA with Financial Institution G. However, Amount 1 was invested in a non-IRA account. On Date 3, Decedent B died.

On Date 4, Taxpayer A again relied on the advice of Financial Advisor F with Financial Institution E and Financial Institution G when he took a distribution equal to Amount 2 from IRA D to roll over into a self-directed IRA with Financial Institution G. Amount 2, however, was invested in a non-IRA account. Taxpayer A received Forms 1099-R showing taxable distributions from IRA C and IRA D, which he believed were issued in error based on the assurances of Financial Advisor F. Taxpayer A became aware that Amount 1 and Amount 2 were not held in IRA accounts after the expiration of the 60-day period. Amount 1 and Amount 2 total Amount 3.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA C on Date 2 and the distribution of Amount 2 from IRA D on Date 4.

Section 408(a) of the Code defines an individual retirement account to mean a trust created or organized in the United States and requires that the trustee be a bank or an approved non-bank trustee.

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.

Section 408(d)(3) of the Code 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 or 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)(E) of the Code provides that the rollover provisions of section 408(d)(3) 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 of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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.

Section 3.02 of Revenue Procedure 2003-16, 2003-4 I.R.B. 359 ("Rev. Proc. 2003-16"), provides that the Service will issue a ruling waiving the 60-day rollover requirement in cases 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 taxpayer. 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.

Section 3.04 of Rev. Proc. 2003-16 provides that the rules regarding the amount of money or other property that can be rolled over into an eligible retirement plan within the 60-day rollover period apply to deposits made pursuant to a waiver of the 60-day rollover period (thus, if a taxpayer received $6,000 in cash from the taxpayer's IRA, the most that could be deposited into an eligible retirement plan pursuant to a waiver of the 60-day rollover period is $6,000).

The information and documentation submitted are consistent with Taxpayer A's assertion that Decedent B and Taxpayer A were unable to accomplish rollovers of the distributions of Amount 1 from IRA C and Amount 2 from IRA D within the 60-day period prescribed by section 408(d)(3) because of errors made by Financial Advisor F with Financial Institution E and Financial Institution G, which led to the investment of Amount 1 and Amount 2 in non-IRA accounts.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA C on Date 2 and Amount 2 from IRA D on Date 4. Taxpayer A has 60 days from the issuance of this ruling to contribute cash in an amount not to exceed Amount 3, the total of Amount 1 and Amount 2, to an IRA account. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, will be met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

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 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.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

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

Sincerely,

Adam P. Zaebst

Adam P. Zaebst, Manager
Employee Plans Technical Group 1

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

cc: