

## **IRS Letter Rulings and TAMS (Current), UIL No. 0408.03-00 Individual retirement accounts; Rollover contributions. IRS Letter Ruling 201406023 (Nov. 14, 2013), Internal Revenue Service, (Nov. 14, 2013)**

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LTR 201406023, November 14, 2013

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**Uniform Issue List No. 0408.03-00**

[\[Code Sec. 408\]](#)

### **Individual retirement accounts; Rollover contributions.**

This letter is in response to your request dated November 15, 2012, as supplemented by correspondence dated March 19, 2013, April 10, 16, and 26, 2013, May 1, 2013, and July 25, 2013, 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 represents that he maintains retirement account balances in three separate retirement plans, Plan B, SEP-IRA C and traditional IRA D. Taxpayer A attained age 70 1/2 on January 15, 2012. As provided in Internal Revenue Code section 401(a)(9), Taxpayer A became subject to the required minimum distribution ("RMD") rules in 2012. In accordance with the RMD rules, Taxpayer A was required to take a first RMD from Plan B, SEP-IRA C and IRA D either by December 31, 2012 or by April 1, 2013. Taxpayer A decided to take his first RMD in tax year 2012.

Taxpayer A consulted Financial Advisor F and was advised to calculate the RMD for tax year 2012 separately for each retirement plan. The 2012 RMD for Plan B was calculated to be Amount 1. The 2012 RMD for SEP-IRA C was calculated to be Amount 2. The 2012 RMD for IRA D was calculated to be Amount 3.

Financial Advisor F erroneously advised Taxpayer A that the RMD rules permit the entire amount of RMDs to be taken from a single retirement plan. Based on this advice, Taxpayer A requested that the total 2012 RMDs for Plan B, SEP-IRA C and IRA D be taken from SEP-IRA C. The amounts were distributed in January 2012, February 2012 and May 2012. Taxpayer A deposited all amounts in Account E.

In September of 2012, Taxpayer A was informed by the Plan B administrator that he was required to take a RMD of Amount 1 from Plan B. It wasn't until then that Taxpayer A understood that the RMD distribution from SEP-IRA C incorrectly included the RMD amount attributable to Plan B. Upon confirmation that the distribution from SEP-IRA C could only be used to satisfy the RMD for SEP-IRA C and IRA D, but not Plan B, Taxpayer A requested that SEP-IRA C reverse the distribution of Amount 1. The request was denied.

On October 26, 2012, Taxpayer A rolled Amount 1 from Account E into Plan B. On December 28, 2012, Amount 1 was distributed from Plan B as the RMD from Plan B for 2012.

Taxpayer A has represented that, pursuant to section 1.401(a)(9)-7, Q&A-2, of the Income Tax Regulations, Amount 1 will be treated as included in his account balance in Plan B as of the plan year ending December 31, 2012, for purposes of calculating his 2013 RMD from Plan B.

Based on the facts and representations, a ruling has been requested that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from SEP-IRA C and subsequent rollover into Plan B.

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 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code 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).

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 due to a mistake by Financial Advisor F which resulted in Amount 1 being distributed from SEP-IRA C in error. Financial Advisor F has acknowledged that the advice he gave Taxpayer A was in error.

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 SEP-IRA C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement, were met with respect to the contribution of Amount 1 into Plan B on October 26, 2012, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of any 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 \*\*\*\*\* (ID \*\*\*\*\* ) at (\*\*\*\*\* ) \*\*\*\*\* . Please address all correspondence to SE:T:EP:RA:T1.

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