



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201316024

JAN 24 2013

T:EP:RA:T1

Uniform Issue List: 408.03-00

XXXXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

IRA B = XXXXXXXXXXXXXXXX

Bank C = XXXXXXXXXXXXXXXX

IRA D = XXXXXXXXXXXXXXXX

Bank E = XXXXXXXXXXXXXXXX

Amount 1 = XXXXXXXXXXXXXXXX

Amount 2 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to your request dated February 14, 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, represents that he received a distribution from IRA B totaling Amount 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) was due to his temporary use of the funds as escrow for the purchase of a home for his daughter and the delay in the return of the funds from this account.

Taxpayer A maintained IRA B with Bank C. In April 20 , Taxpayer A's daughter was attempting to purchase a home that was in foreclosure. Part of the qualification to buy the home was having a substantial amount of funds on deposit. At about this time, Taxpayer A had 3 certificates of deposit, totaling Amount 1, in IRA B that were maturing. Taxpayer A received a distribution totaling Amount 1 from IRA B and deposited Amount 2 in a non-IRA escrow account with Bank E. Taxpayer A intended to rollover Amount 1 upon the completed purchase of the home by his daughter. Because of the nature of the sale, the funds were not returned to Taxpayer A until July , 20 , after the expiration of the 60-day period. Despite being after the 60-day period, Taxpayer A was able to deposit Amount 1 in IRA D with Bank E. In June 20 , Taxpayer A received a deficiency notice from the Service on the 20 distribution from IRA B.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA 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 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)(C) of the Code provides, in summary, that the rollover rules of Code section 408(d)(3) do not apply to inherited IRAs.

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.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over the distribution of Amount 1 from IRA B, or any portion thereof, to an IRA. Taxpayer A has stated that the Amount 1 distribution from IRA B was used as escrow for the purchase of a home for his daughter and could not be returned to IRA B within 60-days because the purchase of the house took longer than the 60-day rollover period causing the failure of Taxpayer A to complete a rollover. In essence, Taxpayer A made a short term loan when he withdrew Amount 1 from IRA B and while he had the intent at the time of withdrawal to redeposit Amount 1 into an IRA prior to the expiration of the 60-day rollover period, he assumed the risk that Amount 1 might not be returned to him timely. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Internal Revenue Service hereby declines to waive the 60-day rollover requirement with respect to the April, 2009, distribution to Taxpayer A of Amount 1.

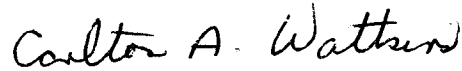
Thus, the contribution of Amount 1, which Taxpayer A deposited back into an IRA after the expiration of the 60-day period, will not be considered a valid rollover because the 60-day requirement under section 408(d)(3) of the Code with respect to such contribution was not satisfied.

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 (Identification
No. XXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to
SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose