



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG 19 2004

T:EP:RA:

Uniform Issue List: 408.03-00

Legend:

Taxpayer = *****

Amount A = *****

Bank B = *****

Company C = *****

IRA Y = *****

Dear *****:

This is in response to a letter dated August 7, 2003, as supplemented by additional correspondence and communications dated February 24, April 6, and April 8, 2004, in which you ("the Taxpayer") request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"). On June 23, 2004, a conference of right was held, involving the Taxpayer and representatives of the Internal Revenue Service ("Service"), under the rules of section 12 of Revenue Procedure 2004-4, 2004-1 I.R.B. 125 (January 5, 2004). Since that conference, the Taxpayer has not filed additional comments regarding the issues that were discussed.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

In April, , the Taxpayer was attempting to obtain a mortgage loan from Bank B to purchase real estate, based on the value of four properties she had received as part of a divorce settlement in January, . Because she owned the properties "free and clear," the Vice President of Bank B assured the Taxpayer that the time needed to process her mortgage loan application would not exceed 60 days. The Taxpayer intended to take a distribution from IRA Y, use the proceeds for the purchase of real estate, and then return the proceeds to IRA Y within 60 days. In April of , the Taxpayer withdrew Amount A from IRA Y and used the funds for the purchase of real estate.

In June, , with the 60-day period for returning Amount A to IRA Y about to expire, Bank B notified the Taxpayer that there was a problem pertaining to release of liens on of the properties which were the subject of her mortgage loan application. This issue delayed the closing on the Taxpayer's loan until July 30, . The Taxpayer then deposited the proceeds of the loan in her savings account and contacted an official of Company C who advised her that the 60-day deadline had expired and that the money she had withdrawn from IRA Y could not be re-deposited. However, after further discussions with representatives of Company C, the Taxpayer did re-deposit Amount A into IRA Y in November,

Based on the facts and representations presented above, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount A.

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) 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) 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).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, 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.

In this case, the information presented does not demonstrate circumstances that justify a waiver of the 60-day rollover requirement. The Taxpayer used Amount A to purchase real estate rather than roll the distribution over into another eligible retirement plan.

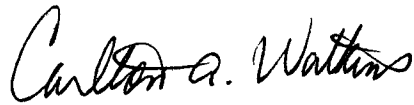
Therefore, the Service declines to waive the 60-day rollover requirement of Code section 408(d)(3)(A) with respect to the distribution of Amount A. The deposit of Amount A into IRA Y is not considered a valid rollover because the 60-day requirement under section 408(d)(3) of the Code with respect to 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 *****
*****, by phone at _____ or by FAX at _____
Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



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

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose