



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200504037

NOV 04 2004

SE.T:EP:RA.TI

Uniform Issue List: 408.03-00

Legend:

Taxpayer = *****

Daughter = *****
Amount D = *****
Amount E = *****
Financial Institution M = *****

College N = *****

IRA X = *****

Dear *****:

This is in response to your letter dated *****, as supplemented by additional correspondence dated *****, 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 by you under penalty of perjury in support of the ruling requested:

On *****, the Taxpayer took a distribution of Amount D from IRA X, an individual retirement account maintained with Financial Institution M. The date on which the withdrawal took place was the last available date for prospective students to pay

their tuition at College N in order to enroll for the Fall, 2003 semester. The money distributed from IRA X was used by the Taxpayer to pay his Daughter's tuition at College N. The Taxpayer represents that, with three children currently attending college, his only savings were in his IRAs, including IRA X.

Prior to the Taxpayer's withdrawal of funds from IRA X, his Daughter had been trying for weeks to get financial aid documents processed through College N's student aid office for the Fall semester. She was required to complete the Free Application for Federal Student Aid ("FAFSA") form which was submitted to the U.S. Department of Education for a determination of eligibility and type of aid available for her.

At the time he made the withdrawal, the Taxpayer inquired at Financial Institution M about using the funds in IRA X for his Daughter's tuition. He was informed by Financial Institution M that he would not be charged the 10% tax penalty for early withdrawal. Taxpayer also was told that if the funds were replaced in IRA X within 60 days of their August 29 withdrawal date, the distribution would not be reported as income. Taxpayer anticipated using the student loan money to repay the amount he withdrew from IRA X.

Also, at the time Taxpayer withdrew Amount D from IRA X, he was advised by one of College N's financial aid officers that, since he and his Daughter had provided all the information necessary to process the Daughter's financial aid request, a final decision regarding the financial aid application would be made in about six weeks, within the 60 days allotted for returning the distribution to IRA X. However, the federal agency's processing of the FAFSA form took longer than anticipated, and the Taxpayer's Daughter did not receive the first installment of her student loans, Amount E, until *****, or about two and one-half weeks after the expiration of the 60-day period for returning to IRA X the money the Taxpayer had withdrawn from it. The second and final installment of the student loan money, equivalent in amount to the first installment, was not made until *****. However, Taxpayer has been ready since *****, to redeposit the money withdrawn from IRA X.

The Taxpayer represents that no other distribution or rollover involving the assets of IRA X had taken place during the one-year period prior to the receipt of the distribution that is the subject of this waiver request.

Based on the facts and representations recited above, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D, because the failure to waive such requirement would be against equity or good conscience.

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.

Code § 72(t) provides that if any taxpayer receives any amount from a qualified retirement plan, including for this purpose an IRA distribution, the taxpayer's tax for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income, subject to certain exceptions. Section 72(t)(2)(E) provides that distributions from individual retirement plans for higher education expenses will not be subject to tax under section 72(t)(1) to the extent such distributions do not exceed the qualified higher education expenses (as defined in section 72(t)(7)) of the taxpayer for the taxable year.

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.

Rev. Proc. 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 Code § 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, it appears from the facts that you used the funds from your IRA distribution to pay your daughter's college tuition in a transaction that amounts to a short-term interest free loan. The Committee Report describing legislative intent indicates that the Congress enacted the rollover provisions to allow portability between eligible retirement plans including IRAs. Using a distribution as a short-term loan to cover personal expenses is not consistent with the intent of Congress to allow portability between eligible plans. The information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code. Under these circumstances, the failure to waive the 60-day requirement would not be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount D. Thus, Amount D 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 will not be 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 telephone at [REDACTED] or by fax [REDACTED]. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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