



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201130014

MAY 05 2011

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A	=
Financial Institution B	=
IRA X	=
Amount 1	=

Dear

This is in response to your ruling request dated April 29, 2010, as supplemented by correspondence dated February 21, 2011, 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 withdrew funds from his IRA totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code was due to financial difficulties involving the loss of his job, a fire in his home and a pending move, as well as the downturn in the economy and the decline in the value of his retirement funds.

Taxpayer A represents that he was the owner of IRA X, a qualified individual retirement arrangement ("IRA") established and maintained at Financial Institution B under the rules of section 408 of the Code. Taxpayer A represents that on February 20, 2008, he received a distribution totaling Amount 1 from IRA X due to financial pressures of losing his job. Taxpayer A asserts that the withdrawal was made with the intent to rollover pending a new job or sale of his home or farm. On March 6, 2008, Taxpayer A suffered a fire to his home which exasperated his financial situation. Information submitted indicates that Taxpayer A utilized the proceeds from IRA X until he received an insurance settlement on his home. Amount 1 was subsequently re-deposited into IRA X on September 3, 2008.

Based on the above facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

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)(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 the documentation submitted in this case indicates that Taxpayer A withdrew Amount 1 from IRA X for use as a short term interest free loan to cover personal living expenses. The Committee Report describing legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible 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 and Rev. Proc. 2003-16.

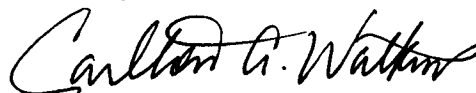
Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X and thus Amount 1 will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied. Amount 1 must be included in Taxpayer A's gross income for the 2008 taxable year.

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 xxxxxxxxxxxxxxxxxxxx (Government Identification Number xx-xxxxx) by phone at (xxx) xxx-xxxx or by fax 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