



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201218040

FEB 08 2012

Uniform Issue List: 408.03-00

SEP:IRA:T1

Legend:

Taxpayer A =
SEP-IRA B =
Financial Institution C =
Company D =
Amount 1 =
Amount 2 =

Dear :

This letter is in response to a request for a letter ruling dated April 15, 2011, as supplemented by additional correspondence dated June 21, September 1 and 20, October 26, and November 3 and 28, 2011, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 2 from a simplified employee pension-individual retirement account (SEP-IRA B), maintained with Financial Institution C.

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

Taxpayer A, age 63, represents that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his physical condition which interfered with the management of his financial affairs.

Taxpayer A maintained SEP-IRA B, simplified employee pension-individual retirement account under section 408(k) of the Code. On or around June 4, 2010,

Taxpayer A withdrew Amount 1 from SEP-IRA B for use in a real estate investment. Taxpayer A indicated he had lost much of his retirement savings from 2007 through 2009 and wanted to use his retirement assets to purchase foreclosed homes to renovate and resell. After investing Amount 1 with Company D, Taxpayer A indicated that he attempted to find an IRA trustee that invested in foreclosed homes but was unable to identify such a trustee. He also argues that his physical and mental health made it impossible for him to perform all the tasks necessary to learn about and comply with the rules for distributions from IRAs.

Based on the above facts and representations, you request 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 2, a portion of Amount 1, from SEP-IRA B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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) 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)(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) 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.

The information presented and the documentation submitted in this case indicates that Taxpayer A withdrew Amount 1 from SEP-IRA B with the stated intent of purchasing and renovating foreclosed real estate but was not able to find an IRA trustee for such investment. Taxpayer A spent a portion of Amount 1 and now seeks to rollover Amount 2, the remaining portion of Amount 1.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, which include: 1) errors committed by a financial institution; 2) death; 3) hospitalization; 4) postal error; 5) incarceration; and/or 6) disability. In this instance, 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 rollover Amount 2 on a timely basis. Despite Taxpayer A's ongoing medical and financial problems during 2010, Taxpayer A was able to engage in a complicated real estate transaction using funds from SEP-IRA B. The information presented indicates that the failure to rollover Amount 2 into an IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A.

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 2 from SEP-IRA B and thus Amount 2 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.

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
(I.D. #), , at () - .

201218040

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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