TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

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Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

LEGEND:

Taxpayer A =

IRA B =

Custodian C =

Account D =

Account E =

Amount 1 =

Amount 2 =

Dear :

This letter responds to your request for a letter ruling dated September 21, 2012, as supplemented by correspondence dated January 30, 2013 and May 1, 2013, 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").

You submitted the following facts and representations in support of your request under penalties of perjury:

Taxpayer A represents that she received a distribution from IRA B totaling Amount 1 to use the funds, to the extent necessary, for a home purchase. Taxpayer A asserts her failure to roll over the unused funds within the 60-day period prescribed by section

408(d)(3) was due to an unexpected delay in the closing on the sale of her existing home, resulting in her inability to return the unused funds to IRA B in a timely manner.

On April 28, 20 , Taxpayer A withdrew Amount 1 from IRA B. She represents that because she was unemployed at the time, she would not receive a large mortgage loan and would need a large cash down payment. She also represents that she was uncertain how much cash she needed, but that she intended to return any unused funds to IRA B after the closing, and she believed the closing would occur within the 60-day period. Taxpayer A has further represented that the unused funds (Amount 2) remained in either her savings Account D or her checking Account E from the date of distribution to the date of return to IRA B. Taxpayer A further represented that her financial situation subsequently caused her to withdraw those funds from IRA B to use for living expenses.

Taxpayer A represents that the purchase of her new home was contingent on the sale of her existing home. The purchasers of her existing home lost their financing, which delayed the closing on her existing home by two weeks. Correspondingly, the closing on Taxpayer A's new home was also pushed back two weeks until June 20, 20 . The funds (Amount 2) were not returned to IRA B until July 1, 20 , after the expiration of the 60-day period. Despite being after the 60-day period, Taxpayer A was able to deposit Amount 2 in IRA B with Custodian C.

Taxpayer A indicated that she is unable to recall specifically the events related to the rollover, because she suffers from medical conditions that affected her memory. Taxpayer A submitted documentation, including a letter from her physician dated May 1, 20 , indicating that Taxpayer A had been under his care for these medical conditions beginning September 20 .

Based on the facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount 2 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 received 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)(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)(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 section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

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 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 sufficient evidence showing how the factors outlined in Rev. Proc. 2003-16 affected her ability to roll over the distribution of Amount 2 from IRA B. In essence, Taxpayer A made a short-term loan from IRA B when she withdrew Amount 1, with the intention to use as much of Amount 1 as necessary to purchase a home. In doing so, Taxpayer A assumed the risk that she might not be able to return the unused funds timely (Amount 2). 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 April 28, 20 distribution to Taxpayer A of Amount 1.

Thus, the contribution of Amount 2, which Taxpayer A deposited back into IRA B after the expiration of the 60-day period, will not be considered a valid rollover contribution because the 60-day requirement under section 408(d)(3) of the Code with respect to this contribution was not satisfied.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact (ID Number ) at . Please address all correspondence to SE:T:EP:RA:T:1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter ruling
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