



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

201437030

JUN 05 2014

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

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Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXX
- IRA B = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
- Financial Institution C = XXXXXXXXXXXXXXXXXXXX
- Amount 1 = XXXXXXXXXXXXXXXXXXXX
- Amount 2 = XXXXXXXXXXXXXXXXXXXX
- Amount 3 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXXXXXX:

This is in response to your request dated August 14, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A received a distribution from IRA B totaling Amount 1. She failed to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code due to her temporary use of the distributed funds to finance the purchase of a new home and her inability to replace Amount 1 within the 60-day period.

On March 13, 2013, Taxpayer A withdrew Amount 1 from IRA B, an individual retirement account ("IRA") as defined in section 408(a) of the Code, maintained by Financial Institution C. The funds were withdrawn specifically for the purpose of using them as a short term loan to purchase a new residence with her husband. Taxpayer A intended to roll over Amount 1 back into IRA B within the 60-day rollover period. Taxpayer A was able to complete a partial rollover totaling Amount 2 but was unable to

complete the rollover of the distribution totaling Amount 3 because the sale of their existing residence and another property they owned was not complete before the end of the 60-day rollover period. Taxpayer A stated that it was out of her control as to when the sale of these properties was completed. While Taxpayer A further stated that her intention was to roll over the full distribution of Amount 1 back into IRA B at Financial Institution C, Taxpayer A undertook the transaction with knowledge of using the distributed funds as a short term loan.

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 3 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) 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) 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)(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)(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 (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 Service has the authority to waive the 60-day 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 one of the factors enumerated in Revenue Procedure 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, or disability. Taxpayer A has asserted that she took a distribution totaling Amount 1 from IRA B to secure the purchase of a new residence. In effect, Taxpayer A made a short term loan when she withdrew Amount 1 from IRA B to purchase the residence. Accordingly, Taxpayer A has not alleged that any of the factors enumerated in Revenue Procedure 2003-16 prevented her from timely completing the rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA B. Thus, any contribution of Amount 3 into a rollover IRA following the distribution of Amount 1 will not be considered a valid rollover contribution because the 60-day requirement under section 408(d)(3) 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 ruling 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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish timely rollover was due to the failure of Financial Institution C to follow his instructions, which resulted in Amount 2 being deposited into IRA F on November 26, 2010, twelve days after the end of the 60-day waiver period.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX (Identification No. XXXXXXXXXXXXXXXX) 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 letter ruling
Notice of Intention to Disclose