



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN 21 2006

Uniform Issue List: 408.03-00

T: EP: RA:73

Legend:

State A =

Amount C =

Amount D =

Amount E =

Date M =

Date N =

IRA X =

Dear

This is in response to your request dated January 27, 2006 as supplemented by correspondence dated May 31, 2006, 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:

You represent that you received a distribution from your individual retirement arrangement (IRA X) totaling Amount C. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to your inability to acquire the funds to rollover within 60 days.

In _____ and _____ you had your tax returns prepared by an independent tax preparer. When your returns were audited, it was determined that you owed additional taxes. You did not have the funds readily available to cover the cost of the additional taxes plus interest and penalties. In order to meet your tax obligations, you withdrew Amount C from IRA X on Date M, 2005 (Amount C is the total of Amount D and Amount E). Amount D was used to pay the additional taxes and penalties owed to the United States government, and to State A. Your representative stated, in a conference with us on May 31, 2006, that you used Amount E to pay down credit card debt. You withdrew Amount C with the anticipation of repaying it into IRA X within 60 days. You hoped to acquire funds to complete the rollover by taking out a second mortgage on your house. You were told that approval of the second mortgage would take 35-40 days to approve. However, because of credit issues involving your ex-husband, the second mortgage was not approved within the 60-day time period. You then put up for sale another property which you owned. That property was sold on Date N, 2005. However, this date was also after the 60-day rollover period had passed.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to Amount C, contained in section 408(d)(3) of the Code in this instance.

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.

It appears from the facts that you used the funds from your IRA distribution to pay tax liabilities and to pay down credit card debt, in transactions that amount 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 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.

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 A.

Thus, Amount A 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.

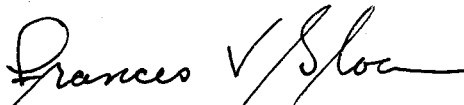
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact ***** (ID **-****) at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T:3

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

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

CC: