



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200628028

APR 17 2006

U.I.L. 408.03-00

T:EP:RA:T2

Legend:

Taxpayer A =
IRA X =
Amount D =
Amount E =
Amount F =
Company B =

Dear

This is in response to a request dated January 25, 2006, as supplemented by correspondence dated March 15, 2006, submitted on your behalf by your authorized representative for a letter ruling to waive 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 penalties of perjury in support of the ruling requested.

In June 2004 Taxpayer A represents that she needed to sell a parcel of real estate, and in order to sell this parcel, the county required specific road improvements to be made. Due to unforeseen events and newly implemented

laws for the road improvements requirement, the road improvements remained incomplete as of April 2005. Prior to the completion of the road improvements, it is represented that Taxpayer A discovered that the financial institution would not allow her to sell the real property prior to repaying a loan that was secured by the property. It is further represented that, Taxpayer A, desiring to conclude this transaction, borrowed the funds necessary to repay the preexisting loan on the property from her individual retirement arrangement, IRA X, she maintained with Company B.

Information submitted with this request indicates that on April 29, 2005 and on May 3, 2005, Taxpayer A withdrew Amount D and Amount E, respectively, from IRA X. It is represented that Taxpayer A used these funds to pay off the preexisting loan on the real property so that she could acquire clear title to such property. It is represented that at the time the funds were withdrawn from IRA X, Taxpayer A believed that she would complete the transaction within a week and would then be able to redeposit such funds back into IRA X. Unfortunately, there were other delays that resulted in Amount D and Amount E being out of IRA X for more than 60 days.

It is represented that Taxpayer A, subsequent to the withdrawal of the funds from IRA X and within 60 days of both distributions, she sought advice about the IRA withdrawals from Company B personnel. Taxpayer A states that she was informed by Company B personnel that as long as she repaid the IRA amounts before the end of the year, there would not be any penalties. Taxpayer A represents that Company B personnel, after consulting with its Finance Department, later confirmed that there would not be any tax consequences if she repaid IRA X prior to December 31, 2005. Taxpayer A represents that she wanted to make sure of the tax consequences associated with the withdrawal of Amount D and Amount E from IRA X, and if there were any, that she would then pursue other alternatives to redeposit the IRA funds on a timely basis. Taxpayer A states that based on the advice she received from Company B personnel, she did not use other funds to repay the IRA.

Taxpayer A states that when the sale of the real property concluded, she wrote a check to Company B dated July 27, 2005, a date that is subsequent to the applicable 60-day rollover period, requesting that it redeposit Amount D and Amount E into her IRA. (Taxpayer A submitted a copy of her checking account statement for July 2005 that shows a deposit of Amount F into that account on July 26, 2005. Amount F exceeds the sum of Amount D and Amount E. The July 2005 account statement, however, also shows that prior to the deposit of Amount F, the beginning balance of that account was approximately 1/6 of Amount F and less than the sum of Amount D). Taxpayer A received a letter from Company B dated August 3, 2005 in which it returned the check to her indicating that such amount could not be redeposited into her IRA as the 60-day rollover period had expired. Taxpayer A states that her failure to redeposit Amount D and Amount E into IRA X within the 60-day rollover period was due to the bad

advice she received from Company B personnel that led her to believe that she could redeposit such amounts into IRA X without adverse tax consequences provided that such amounts were redeposited before December 31, 2005.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D and Amount E from IRA X.

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)(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 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 occur 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, 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.

Information submitted in this request indicates that Taxpayer A withdrew Amount D and Amount E from IRA X in April and May 2005, respectively. Taxpayer A represents that she withdrew the funds from IRA X in order to pay off a loan that secured a parcel of real estate that she wanted to sell. Taxpayer A states that, subsequent to the withdrawal of the funds from IRA X, she was informed by Company B personnel that she had until December 31, 2005 to redeposit the funds into her IRA without adverse tax consequences. Taxpayer A states that had she known that she would incur adverse tax consequences, she would have pursued other alternatives to redeposit the funds back into IRA X on a timely basis. Taxpayer A states that she did not seek other alternatives to redeposit the funds into IRA X based on information provided by Company B personnel which later proved to be inaccurate. Taxpayer A received the proceeds from the sale of the parcel of real estate on or about July 27, 2005, a date which is subsequent to the 60-day rollover period for the distributions from IRA X.

Taxpayer A withdrew money from IRA X and used it to pay off a loan on parcel of real estate. Taxpayer A's use of the IRA funds in this situation constituted using the IRA funds as a short term loan. The Committee Reports describing the legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible retirement plans, including IRAs. Using a distribution from an IRA as a short term loan is not consistent with the intent of Congress to allow portability between eligible retirement plans. Since Amount D and Amount E were used for purposes other than a rollover as described in Code section 408(d)(3), the request to waive the 60-day rollover requirement with respect to such amounts is denied.

Under Revenue Procedure 2006-4, 2006-1 I.R.B. 132, letter rulings are issued to taxpayers based on a complete statement of all of the facts that relate to the transaction. Section 8.02 of that procedure provides that letter rulings will not be issued on hypothetical situations. That Taxpayer A would have exercised other options to redeposit the funds into IRA X within the 60-day rollover period had she been so informed of the adverse tax consequences associated with not completing a rollover within the applicable 60-day rollover period is hypothetical in nature, since it appears from the facts submitted that she did not exercise other options during the 60-day rollover period. There is nothing in our letter

ruling procedure that allows the Service to consider hypothetical facts when issuing letter rulings.

Under the circumstances presented in this case, the failure to waive the 60-day rollover requirement would not be against equity or good conscience. Therefore, with respect to your ruling request, we conclude that, pursuant to Code section 408(d)(3)(I), the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount D and Amount E from IRA X, and that Amount D and Amount E will not be considered valid rollover contributions under Code section 408(d)(3) because of the 60-day 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 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.

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

If you have any questions concerning this letter, please contact
SE:T:EP:RA:T2.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose