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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

**201118025**

Uniform Issue List: 408.03-00

FEB 11 2011

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Legend:

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|---|---|
| Taxpayer A | = XXXXXXXXXXXXXX |
| Individual B | = XXXXXXXXXXXXXX |
| IRA X | = XXXXXXXXXXXXXX XXXXXXXXXXXXXX |
| Financial Institution C | = XXXXXXXXXXXXXX |
| Bank D | = XXXXXXXXXXXXXX |
| Amount N | = XXXXXXXXXXXXXX |
| Date 1 | = XXXXXXXXXXXXXX |
| Date 2 | = XXXXXXXXXXXXXX |
| Date 3 | = XXXXXXXXXXXXXX |

Dear XXXXXXXXXX:

This is in response to a letter dated July 30, 2010, as supplemented by correspondence dated October 25, 2010, requesting 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, age 49, represents that on Date 1 he received a distribution of Amount N from IRA X which he maintained at Financial Institution C. Taxpayer A asserts that he did use Amount N for a short-term purpose but that he always intended to roll over

Amount N into an IRA and that his failure to accomplish a rollover of Amount N within the 60-day period prescribed by section 408(d)(3) of the Code was due to error by Bank D.

Taxpayer A represents that when his elderly mother, Individual B, developed mobility limitations which made it unsafe for her to remain in her two-story residence, Taxpayer A's siblings developed a plan which, in pertinent part, involved Taxpayer A and his siblings pooling their money to add to the sale proceeds of the first residence in order for Individual B to make a cash purchase of suitable housing. Individual B would then enter into reverse-mortgage financing of the new residence and receive a lump-sum cash payment which she would use to repay Taxpayer A and the others. Taxpayer A would then redeposit Amount N into IRA X.

On Date 1, Taxpayer A received a distribution of Amount N from IRA X. On Date 2, seven days after Date 1, Amount N was applied to the above described purchase. Also, on Date 2, Bank D began processing the reverse mortgage. Taxpayer A represents that Bank D gave assurances that the mortgage process, including payment to Individual B, would be completed within a time frame which would have allowed Taxpayer A to meet the 60-day period for rolling over Amount N into IRA X, however, numerous delays by Bank D resulted in the mortgage not having been processed as of the 60th day after the distribution of Amount N from IRA X.

Taxpayer A represents that upon completion of the processing of the reverse mortgage, Taxpayer A was reimbursed in full and immediately mailed an amount equal to Amount N, to Financial Institution C with instructions to redeposit Amount N into IRA X. On Date 3, Amount N was redeposited into IRA X, however, as explained above, the 60-day period for rolling over Amount N into an IRA had already expired.

Taxpayer A asserts that his failure to roll over Amount N to an IRA within 60 days of the date it was distributed from IRA X was due to numerous and unreasonable processing delays by Bank D which were beyond his control. In addition, Taxpayer asserts that based on the total number of days, per his calculation, that the 60-day rollover period was exceeded, and the adverse tax consequences to him for the premature distribution of Amount N from IRA X and the deposit of Amount N into IRA X after the 60-day rollover had expired, it would be against equity and good conscience not to grant a waiver of the 60-day rollover period in this case.

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

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.

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 timely roll over Amount N of IRA X, or any portion thereof, to an IRA. Taxpayer A has stated that error by Bank D is responsible for his failure to make a timely rollover of Amount N, however, when Amount N was presented to Bank D, Taxpayer A did not intend that Bank D transact any financial matter relating to an IRA. Rather, Amount N was withdrawn from IRA X at Financial Institution C and was presented to Bank D for the purpose of contributing Amount N, on a temporary basis, toward the purchase price of a suitable residence for Individual B. In essence, Taxpayer A made a short term loan when he withdrew Amount N from IRA X and while he had the intent at the time of withdrawal to redeposit Amount N into IRA X prior to the expiration of the 60-day rollover period, he assumed the risk that Amount N might not be returned to him timely.

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 N from IRA X. Thus, the contribution of Amount N which Taxpayer A deposited back into an IRA after the expiration of the 60-day period following the distribution of Amount N from IRA X on Date 1 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 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 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 XXXXXXXXXXXXXX (ID XXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

Adla Perry

Fran S. Sloan, Manager
Employee Plans, Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose