

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

200433022

SE.T.EP.RA.T4

In _____ you took a distribution of Amount A from your individual retirement account (IRA X) in order to pay off massive debts that were threatening the retention of your home. You had some unexpected medical bill and repairs as well as repairs to your septic and heating system that

caused your credit cards to become overbearing, and your ability to pay them off with interest was impossible.

You took an early distribution from IRA X to pay medical expenses for your family and to avoid bankruptcy. You planned to replace Amount A in IRA X by selling timber. Due to bad weather, the loggers were not able to harvest the timber until the spring of

During the conference held on April 9, 2004, you contended that your inability to roll over the distribution within 60 days was beyond your reasonable control.

You request a waiver of the 60-day rollover limitation under section 408(d)(3) of the Code in order to allow you to repay the early distribution back into IR 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)(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 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, 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.

Although information presented shows a substantial personal and family hardship, it does not demonstrate the type of circumstances that would justify a waiver of the 60-day rollover period. The Committee Report describing legislative intent indicates that the Congress enacted the rollover

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provisions to allow portability between eligible plans, including IRAs. You used the distribution from IRA X for other purposes.

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 cannot be rolled over because the 60-day requirement under section 408(d)(3) of the Code with respect to such amount 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 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 have any questions please contact ***** #**-*****, at (***) ***-****.

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

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