TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 11 2012

201240031

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

IRA D =

IRA E =

IRA F =

Financial Institution G =

Financial Institution H =

Financial Institution I =

City J =

Company K =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

201240031

Dear :

This letter is in response to a request for a letter ruling dated October 4, 2011, as supplemented by additional correspondence dated January 30, March 13, May 3, and May 10, 2012, from your authorized representative, 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:

Taxpayers A and B represent that they withdrew Amounts 1, 2, 3 and 4 from IRAs C, D, E and F, respectively, in order to pay off an existing mortgage on an investment property. Taxpayers A and B asserts that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to unforeseen delays in the sale of the investment property.

Taxpayer A maintained IRA C, a traditional individual retirement account (IRA) under section 408(a) of the Code. Taxpayer A also maintained IRA D, a Roth IRA under section 408A of the Code. The custodian of both IRAs was Financial Institution G. Taxpayer B maintained IRA E, a traditional IRA under section 408(a) of the Code. Taxpayer B also maintained IRA F, a Roth IRA under section 408A of the Code. The custodian of IRA E was Financial Institution G. The custodian of IRA F was Financial Institution H.

In 1999, Taxpayer A and his investment partner purchased a multi-tenant building in City J. To complete the purchase of the building, Taxpayer A and his partner borrowed funds from Financial Institution I, which was evidenced by a mortgage and promissory note for Amount 6. The mortgage on the property was due and payable on July 23, 2011. Taxpayer A and his partner attempted to refinance the existing mortgage. Around this same time, Company K approached Taxpayer A and his partner with an offer to buy the investment property in City J. On June 10, 2011, Taxpayer A, his partner and Company K entered into an agreement for the sale of the investment property.

To complete the sale, the promissory note had to be paid off. Taxpayer A and his partner spent a considerable amount of time attempting to find a bank or other lending institution willing to loan money secured by commercial real estate. Faced with foreclosure if the loan was not paid off in full by August 31, 2011, Taxpayer A resorted to withdrawing Amount 1 from IRA C and Amount 2 from IRA D. Taxpayer A's spouse (Taxpayer B) contributed Amounts 3 and 4 from

IRA E and IRA F, respectively. On August 25, 2011, Amounts 1, 2, 3 and 4 (totaling Amount 5) were withdrawn from Taxpayer A and B's four IRAs and used to pay off the existing promissory note. Taxpayer A and B's 60-day time period for completing a rollover of Amounts 1, 2, 3 and 4 back to an eligible retirement plan occurred expired on October 24, 2011.

Company K desired to build a brewery on the investment property. Amounts 1, 2, 3 and 4 were withdrawn from IRAs C, D, E and F, respectively, in anticipation of the sale of the investment property which was due to close in late August, 2011. Settlement was delayed because Company K had to secure a zoning variance before it would be issued a construction contract. Other delays in Company K's attempt to obtain approval from City J meant that settlement on the investment property and the return of Amount 5 to the Taxpayers did not occur until the week of March 12, 2012.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 5.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, 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 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 60^{th} 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 60^{th} 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)(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) 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 information presented and the documentation submitted in this case indicates that Taxpayers A and B withdrew Amounts 1, 2, 3 and 4 (Amount 5) from IRAs C, D, E and F, respectively, with the stated intent of paying off a mortgage on commercial real estate in order to sell the property to a prospective buyer. The Taxpayers were unable to complete the sale of the property within the 60-day period for rolling Amounts 1, 2, 3 and 4 into eligible retirement plans.

The Service has the authority to waive the 60-day rollover 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 of one of the factors enumerated in Revenue Procedure 2003-16, which include: 1) errors committed by a financial institution; 2) death; 3) hospitalization; 4) postal error; 5) incarceration; and/or 6) disability. In this instance, Taxpayers A and B have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected their ability to roll over Amounts 1, 2, 3 and 4 on a timely basis. In essence, Taxpayers A and B made short term loans when they withdrew Amounts 1, 2, 3 and 4 from IRAs C, D, E and F. While they had the intent at the time of withdrawal to redeposit Amount 5 into IRAs prior to the expiration of the 60-day rollover period, they assumed the risk that Amount 5 might not be returned to them timely.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 5. Thus, Amount 5 will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied, and, therefore, Amount 5 will be includible in gross income for the 2011 taxable year.

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 letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (I.D. #), , at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: