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

201342016

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 24 2013

Uniform Issue List: 408.03-00

SE:T:EP:RA:T2

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXXXXX
IRA B	=	XXXXXXXXXXXXX XXXXXXXXXXXXX XXXXXXXXXXXXX
Financial Institution C	=	XXXXXXXXXXXXX
Company D	=	XXXXXXXXXXXXX
Account E	=	XXXXXXXXXXXXX XXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXX
Amount 2	=	XXXXXXXXXXXXX
Amount 3	=	XXXXXXXXXXXXX
Amount 4	=	XXXXXXXXXXXXX
Amount 5	=	XXXXXXXXXXXXX
Amount 6	=	XXXXXXXXXXXXX
Amount 7	=	XXXXXXXXXXXXX
Year 1	=	XXXXXXXXXXXXX

Year 2 = XXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

This is in response to your request dated June 14, 2010, as supplemented by correspondence dated November 15, 2010, and January 14, 2011, 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:

Taxpayer A, age 69, represents that he received distributions totaling Amount 1 from IRA B which he maintained at Financial Institution C. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to a medical condition which impaired his ability to manage his financial affairs.

Taxpayer A represents that after he lost his job in December of Year 1, he began using the mutual funds in Account E as collateral to finance his daughters' college expenses. In Year 2, the mutual funds in Account E no longer supported his loan. Taxpayer A began to receive margin calls regarding Account E. In order to satisfy the margin calls, he sold percent of the funds in his retirement accounts, including Amount 2 in IRA B. On October 14 of Year 2, he transferred Amount 2 from IRA B to Account E. That same week, he liquidated a 401(k) account maintained with Company D and deposited Amount 3 into IRA B.

Taxpayer A represents further that under normal circumstances he would have been less impulsive and, rather than using retirement funds or transferring IRA funds to stop the margin calls, he would have reduced the collateralized debt by selling the mutual funds in Account E and his 401(k) or 457 accounts. But, after two thirds of his life savings had evaporated in a single year, his anxiety turned into panic. He then made a number of transfers from IRA B to Account E. Specifically, on November 20, 24, and 25 of Year 2, Amounts 4, 5, 6, and 7, respectively, were transferred.

Taxpayer A also represents that at the time of the transfers, he experienced extreme stress and anxiety due to a number of events to the extent he now suffers from a chronic medical condition. Submitted documents from a treating physician shows that the cause of the relapse of cognitive issues which he had been suffering from includes a statement that Taxpayer A suffers from a medical condition which impaired his ability to complete a timely rollover of Amount 2. Amount 2 remains in Account E, a non-IRA CD.

Based on these facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B.

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 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)).

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.

The information presented and documentation submitted by Taxpayer A, including a statement from his treating physician noting that during the period in which the transfer occurred that he was suffering from this cognitive issue, is consistent with his assertion that his failure to accomplish a timely rollover was caused by his medical condition which impaired his ability to accomplish a timely rollover.

Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 2 into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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.

If you wish to inquire about this ruling, please contact XXXXXXXXX, (I.D. XXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Jason E. Levine, Manager,
Employee Plans Technical Group 2

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