202033008

Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans

May 18, 2020

Uniform Issue List: 408.00-00

Legend

Taxpayer A	=
IRA B	=
Financial Institution C	=
Amount 1	=
Amount 2	=
Year 1	=
Date 2	=
Date 3	=
Date 4	=

Dear:

This is in response to your request dated September 12, 2019, as supplemented by letters dated November 18, 2019, November 20, 2019, April 22, 2020, and April 23, 2020, in which you request, through your authorized representative, 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 penalties of perjury in support of the requested ruling.

Taxpayer A represents that he received a distribution from IRA B equal to Amount 1. Taxpayer A asserts that the failure to accomplish a rollover of Amount 2, a portion of the total distribution amount, within the 60-day period described in section 408(d)(3) of the Code, was due to the failure of his real estate agent and Financial Institution C to inform him of the 60-day rollover period.

In Year 1, Taxpayer A and his spouse worked with a real estate agent in selling their existing home and purchasing a new one. The real estate agent advised Taxpayer A to make a cash offer for the purchase of a new residence using funds from IRA B. The real estate agent assured Taxpayer A that he could repay the amount back into his IRA at a later time, after the sale of his current residence, and made no mention of the 60-day rollover period.

Lacking other available funds and acting on the advice of the real estate agent, Taxpayer A completed a distribution request form provided by Financial Institution C. Taxpayer A indicated on the form that the purpose for the distribution was to purchase a new home. Financial Institution C's distribution request form stated that the individual requesting a distribution and signing the form understands that a 10 percent tax penalty and ordinary income taxes may apply to the distribution, and the individual agrees to obtain legal and tax advice to make this determination. Although the form provided a rollover option, it made no mention of the 60-day rollover period.

On Date 2, Taxpayer A withdrew Amount 1 from IRA B to purchase the new residence. On Date 3, Taxpayer A used the distribution of Amount 1 for the purchase of his new house. On Date 4, after the expiration of the 60-day rollover period, Taxpayer A's prior residence was sold. After this sale, Taxpayer A contacted Financial Institution C to try to repay Amount 2 (a portion of total distribution Amount 1), back into IRA B. However, Financial Institution C informed him that it could not accept the repayment of Amount 2 because the 60-day rollover period had passed.

Based on the above facts and representations, Taxpayer A requests a waiver of the 60-day rollover period under section 408(d)(3) of the Code 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.

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) 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 or 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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 ("Rev. Proc. 2003-16"), provides that the Internal Revenue Service (the "Service") will issue a ruling waiving the 60-day rollover requirement in cases 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 taxpayer. 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) the 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 asserts that the failure to make a timely rollover of Amount 2 was caused by the failure of the real estate agent and Financial Institution C to inform him of the 60-day rollover period. However, unlike a plan qualified under section 401(a), the Code does not impose a requirement on an IRA custodian to inform individuals of the rollover rules, and the failure of the realtor and the financial institution to provide this information does not rise to the level of financial institution error.

In this case, the information and documentation submitted show that Taxpayer A withdrew Amount 1 from IRA B for use as a short-term, interest-free loan to purchase a new home. One of the factors in Rev. Proc. 2003-16 is the use of the amount distributed, for example, whether the amount was cashed. The Committee Report describing legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. Using a distribution as a short-term loan to cover personal expenses is not consistent with the intent of Congress to allow portability between eligible plans. Therefore, under the facts and circumstances presented in this case, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B.

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.

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

If you wish to inquire about this ruling, please contact
. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Adam P. Zaebst

Adam P. Zaebst, Manager
Employee Plans Technical Group 1

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

Cc: