200540023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SE.T.EP.RA.TI

Legend:

Taxpayer A

Amount P

Amount Q

Dear :

This is in response to a letter dated February 9, 2005, 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 were submitted under penalty of perjury in support of your request.

Taxpayer A maintained an Individual Retirement Account ("IRA X") under Code section 408(a). On November 29, 2004, Taxpayer A withdrew Amount P from IRA X to pay for pre-closing and closing costs associated with the sale of beach rental property and the purchase of a different beach rental property. The sale and purchase occurred on December 1 and 2 of 2004, respectively, and proceeds of Amount Q, an amount in excess of Amount P, were deposited in a money market account on January 18, 2005, a date within the 60-day period for rollovers.

Taxpayer A asserts that his failure to timely roll over Amount P was due to his attention being focused on his child's neurological difficulties. Due to ongoing concerns regarding the development of speech and motor skills of his preschool-age child, and as a result of teacher recommendations after Taxpayer A's child entered preschool in the fall of 2004, Taxpayer A sought a neuropsychological assessment of his child. Testing occurred throughout December of 2004 and on January 26, 2005, Taxpayer A received a final report that confirmed his ongoing concerns. He notes that he received the final report prior to the expiration of the 60-day period. It appears from the final report, included in Taxpayer A's submission, that Taxpayer A's child received testing prior to the above neuropsychological assessment, although the nature of such testing is unclear because this section of the report was redacted for privacy purposes. The submission also indicates that concerns were raised in November of 2004, and

an occupational therapist began working with Taxpayer A's child on a weekly basis six months prior to the December neuropsychological assessment.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount P.

Code section 408(d)(1) 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.

Code section 408(d)(3) defines IRA rollovers and provides the rules applicable thereto.

Code section 408(d)(3)(A)(i) 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 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.

Code section 408(d)(3)(B) 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 one-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).

Code section 408(d)(3)(D) provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(I) provides that the Secretary 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. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 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 Code 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,

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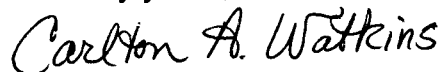whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Although the information presented shows that Taxpayer A's child suffers from a neurological disability, such disability was an ongoing concern to Taxpayer A and predates Taxpayer A's withdrawal from his IRA. During the time leading up to, and including, the testing of Taxpayer A's child, Taxpayer A was able to keep track of other matters and engage in financial transactions such as the IRA withdrawal on November 29, 2004 and the real estate transactions on December 1 and December 2, 2004. In addition, Taxpayer A received the proceeds of his real estate transaction on January 18, 2005, prior to having received his child's test results. Thus, the facts in this case do not demonstrate the type of circumstance that would justify a waiver of the 60-day rollover period. Therefore, the Service declines to waive the 60-day requirement under section 408(d)(3) in this case.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other Code section which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
  Deleted copy of letter ruling
  Notice 437