

200506033

INTERNAL REVENUE SERVICE

NOV 15 2004

SE: T: EP: RA: T4

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Amount B=

Amount C=

IRA X=

Company D=

Bank E=

Builder F=

Date G=

Date H=

Dear :

This is in response to your letter dated , supplemented by your letter dated , 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).

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A maintained IRA X with Company D. On Date G Taxpayer A requested Company D to make an early withdrawal of Amount C from IRA X with the sole purpose of using the withdrawal to purchase his first home. On Date G taxpayer received a check for Amount B. Amount B represented the total distribution due Taxpayer A from IRA X less federal and state withholding. Taxpayer A had been on a waiting list to purchase a house from Builder F. However, Taxpayer A was not selected to consummate the purchase of a house.

Three weeks later Taxpayer A attempted to redeposit Amount C into IRA X at Company D, but was told by personnel of Company D that if he redeposited Amount C he would be taxed an additional 10-percent by the Internal Revenue Service. On Date H Taxpayer A opened a savings account at Bank E where he deposited Amount B. Amount B is still in the savings account at Bank E. Taxpayer A's intention always was to have the money available in case an offer was made to him to purchase his first house. Taxpayer A attempted to redeposit Amount C into IRA X, within 60 days from the date of the distribution, but was discouraged by Company D personnel to do so.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code with respect to Amount C.

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 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. Similar rules apply to distributions taken from qualified trusts or qualified 403(a) annuity plans.

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.

The information presented by Taxpayer A demonstrates that the delay was caused by bad advice provided by personnel of Company D which prevented Taxpayer A from redepositing Amount C into IRA X within 60 days.

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

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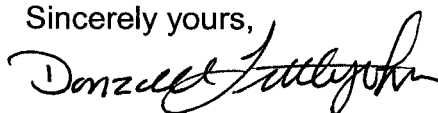
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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 _____, I.D. # _____, at _____.
Please address all correspondence to _____.

Sincerely yours,



, Manager

Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose