

INTERNAL REVENUE SERVICE

AUG 23 2005

200546047

Uniform Issue List: 408.03-00

SE: T. EP: RA T3

Taxpayers A =  
Amount D =  
IRA X =  
Taxpayer B =  
Company N =

Dear [REDACTED]

This is in response to your letters dated June 24, 2004, and November 17, 2004, submitted on your behalf by 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 (the Code).

In April 2003, Taxpayers A withdrew Amount D from IRA X, an Individual Retirement Account set up in the name of Taxpayer A, and maintained with Company N in order to make a down payment on a house. Taxpayers A asserts that he and his spouse, Taxpayer B, had funds in a non-IRA annuity which could have been used for this purpose but because of penalties imposed by the financial institution holding the funds, Taxpayer A used the IRA funds. Taxpayer A asserts that had he been aware of the much greater financial cost of withdrawing Amount D from IRA X than the penalties that could have been imposed on his non-IRA funds, he would have used the non-IRA funds. Taxpayer A discovered their miscalculation when they prepared their calendar year federal income tax return in [REDACTED]

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and against equity or good conscience.

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.

Revenue Procedure 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 indicates that Taxpayer A received a distribution from his IRA X in order to purchase a home. The Committee Report describing legislative intent

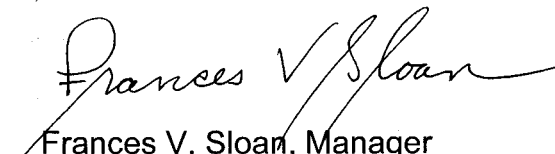
indicates that Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. In general, using a distribution from an IRA to purchase a home is not consistent with the intent of Congress to allow portability between eligible plans and under those circumstances, the failure to waive the 60-day requirement would not be against equity or good conscience where taxpayer was not able to or did not redeposit the funds within the 60-day period.

Thus, the Service will not grant any extension to the 60-day rollover period of Code section 408(d)(3)(A)(1) in this case.

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 [REDACTED] I.D. [REDACTED]  
[REDACTED] at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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