

200702039



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

OCT 16 2006

SE: T: EP: RA: TY

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Amount B=

Amount C=

Amount D=

IRA X=

Broker E=

Bank F=

Dear :

This is in response to your request of December 16, , for 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:

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Taxpayer A, age , and were in the process of purchasing a house. applied to a financial institution for an to help in the purchase of the house. However, the loan process was taking longer than anticipated and in order to be prepared for the closing, on , Taxpayer A withdrew Amount B from IRA X and deposited Amount B in Bank F. Documentation shows that Amount D was withdrawn from Bank F on , in preparation for the closing on . On , Taxpayer A wired Amount C (an amount less than Amount B) to Broker E to redeposit Amount C back into IRA X. At that time the 60-day period had expired.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement 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 60<sup>th</sup> 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<sup>th</sup> 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).

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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, 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 demonstrates that Amount D was used to purchase a house in a transaction that amounts to a short term interest free loan. The Committee Report describing legislative intent indicates that the 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. The information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to Amount C.

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.

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If you wish to inquire about this ruling, please contact \_\_\_\_\_, at  
. Please address all correspondence to \_\_\_\_\_

Sincerely yours,

*Ada Perry*

*for*

, Manager  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose