



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

**200423038**

MAR 11 2004

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*T. EP. RA. T4*

Legend:

Taxpayer A = \*\*\*\*\*

IRA X = \*\*\*\*\*

Amount A = \$\*\*\*\*\*

Dear

This is in response to your correspondence dated March 21, 2003, as supplemented by additional correspondence dated \*\*\*\*\*, and information that you provided during a \*\*\*\*\*, telephone conference, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

You owned a real estate partnership interest (which owned investment real estate). On August \*\*, you entered into a contract to sell certain investment real estate owned by you. On August \*\*, you entered into a binding contract to purchase land to build a personal residence. On January \*\*, you took a distribution of Amount A from IRA X to purchase land to build your personal residence. You intended to repay Amount A to IRA X with a portion of the proceeds from the sale of real estate investment property within the 60-day rollover period of the distribution from IRA X.

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The land purchase contract for your personal residence was completed on January \*\*, Amount A distributed from IRA X was used to close on this land purchase.

Subsequent to the IRA X distribution on January \*\*, the purchaser of your real estate partnership interest indicated that the closing would be deferred until April \*\*, which is after the required 60-day rollover period expired for the distribution from IRA X.

On April \*\*, you deposited Amount A into IRA X, approximately 90 days after the original distribution from IRA X.

Prior to the distribution of Amount X, you had never rolled over any amounts that were excluded under section 408(d)(3)(B) of the Code.

Based on the above facts, you request a ruling that the Service waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)(I) of the Code.

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).

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 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; 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.

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The information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period under section 408(d)(3)(I) of the Code. The Committee Report describing legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. You entered into a binding contract and used Amount A distributed from IRA X to purchase land to build your personal residence. Under these circumstances, the failure to waive the 60-day requirement would not be against equity or good conscience as that term is used in section 408(d)(3)(I).

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount A. Thus, Amount A will not be considered a valid rollover because the 60-day requirement under section 408(d)(3) of the Code with respect to such contribution will not be satisfied.

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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions please contact \*\*\*\*\* I.D. #\*\*\*\*\*, at (\*\*\*) \*\*\*-\*\*\*\*.

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

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